AN

EXACT and most IMPARTIAL ACCOMPT

Of the *Indictment*, *Arraignment*, *Trial*, and *Judgment* (according to *Law*) of Twenty nine

REGICIDES;

THE

MURTHERERS

Of His Late

SACRED MAJESTY

Of Most Glorious Memory:

Begun at *Hicks-Hall* on *Tuesday*, the 9th. of *October*, 1660.

And Continued (at the *Sessions-House* in the *Old-Bayley*) untill *Friday*, the nineteenth of the same Moneth.

Together with a SUMMARY of the Dark, and Horrid *Decrees* of those *Cabalists*, Preparatory to that Hellish Fact.

Exposed to view for the *Reader's* Satisfaction, and Information of *Posterity*.

By Heneage Finch, Earl of Nottingham

London, Printed for *Andrew Crook* at the *Green Dragon* in St. *Paul's* Church-yard, and *Edward Powel* at the *White-Swan* in *Little-Britain*. 1660.

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A

SUMMARY

(by way of *Premiſe*) of the dark Proceedings of the *Cabal* at

WESTMINSTER,

Preparatory to the Murther of His late Sacred Majeſty, Taken out of their own *Journal-Book*.

3. *Jan.* 1647. THe Commons *Reſolved*, That no further Addreſſes be made to the King, by themſelves, nor by any other, without leave of both Houſes; And thoſe, that do, to incur the Penalty of *High-Treaſon*.

And *Declare*, They will receive no more Meſſages from Him.

And *Enjoyn*, That no Perſon, whatſoever, receive, or bring, any Meſſage from Him, to Both, or either Houſes, or to any other Perſon.

15. *Jan.* 1647. The Lords concurred to theſe Votes.

17 *Auguſt*, 1648. The Commons concur with the Lords, That theſe Votes for Non-Addreſſes be Revoked.

20. *November*, 1648. The Army preſent their *Remonſtrance* to the Parliament, for bringing Delinquents to Juſtice.

24. *November*, 1648. The Treaty, at the Iſle of *Wight*, Voted to continue till the twenty ſeventh of *November*.

1. *December*, 1648. Maſter *Hollis* preſents an Account of the Treaty with the King.

And the same day, Information was brought them of the King's being removed, from *Carisbrook*, to *Hurst* Castle.

5. *December*, 1648. The King's Answer to the Propositions *Voted* a Ground for the House to proceed upon, for Settlement of the Peace of the Kingdom.

6. *December*, 1648. The Members were secured by Colonel *Pride*.

7. *December*, 1648. The House of Commons appointed a day of Humiliation; *Peters*, *Caryl*, and *Marshal*, to perform the Duty.

The several Votes { *For Revoking the Votes for Non-Addresses to the King*, / *For a Treaty to be had with Him*, / *That His Answers to the Propositions, were a Ground for Peace*, } Voted Dishonourable, and Destructive.

23. *December*, 1648. A Committee was appointed to consider, how to proceed in a way of Justice against the King, and other Capital Offenders.

28. *December*, 1648. An Ordinace for Trial of the King was read.

1. *January*, 1648. *Declared*, and *adjudged* by the Commons, That, by the fundamental Laws, It is Treason in the King of *England* for the time being, to levy War against the Parliament, and Kingdom.

2. *Jan.* 1648. The Lords disagreed to this *Vote*, and cast it out, and the *Ordinance* for Tryal of the King, *Nemine contradicente*.

3. *Jan.* 1648. The same *Vote* was again put to the question in the House of Commons, and carried in the Affirmative.

4. *Jan.* 1648. Master *Garland* presents a new *Ordinance for erecting an High Court of Justice for Tryal of the King*: which was read the first, second, and third time, assented to, and passed the same day.

And *Ordered* no Copy to be delivered.

Same day. Resolved, *That the People are (under God) the Original of all just Powers.*

That themselves, being Chosen by, and Representing the People, have the Supreme Power in the Nation.

That whatsoever is Enacted, or Declared, for Law by the Commons in Parliament, hath the force of a Law, and the People concluded thereby: though Consent of King, and Peers, be not had thereunto.

6. *Jan.* 1648. The Commissioners for Tryal of the King are *Ordered* to meet on *Munday* then next at two of the clock, in the *Painted-chamber*.

Their

Their days of ſitting were, 8, 10, 12, 13, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, of *January*, 1648.

Painted-chamber, Munday, 8 *January*. They choſe *Ask*, *Doriſlaus*, *Steel*, and *Cook*, to be their Councel, and other Officers.

And ſent out their *Precept*, under their Hands, and Seals, for Proclaiming their Court in *Weſtminſter-hall*, to be held in the *Painted-chamber*, on the tenth. Which *Precept* is all of *Ireton*'s Hand-writing. [*Journal of the Court.* fol. 6.

And

Tueſday, the 19th. The Commiſſioners *Ordered*, That the Proclamation be made in *Cheap-ſide*, and at the *Old-Exchange*: And appointed a Committee to conſider of the matter of Government, of making a new Great Seal, and not uſing the name of a Single Perſon.

Wedneſday, the tenth. They choſe *Bradſhaw* (who was abſent) for their Preſident, and *Say pro tempore*, who gave *Garland* thanks for his Pains about the buſineſs of the Court. *Fol.* 72.

And appointed their Councel to prepare, and proſecute, their Charge.

And a Committee to conſider for carrying on the Tryal. Whereof *Millington*, *Garland*, and *Martin* were three.

Friday, the twelfth. *Waller*, and *Harriſon*, are deſired to attend the *General*, to appoint Guards, to attend the Court.

And *Titchbourn*, and *Roe*, with others, to prepare for the Solemnity of the Tryal, and to appoint Workmen, &c. *Fol.* 16.

The Charge to be brought in on *Munday*.

And *Waller*, *Scot*, *Tichbourn*, *Harriſon*, and others, to conſider of the place for Tryal, and Report the next day.

Saturday, the thirteenth. Upon *Garland*'s Report, *Ordered*, The Tryal be where the Courts of *King*'s *Bench*, and *Chancery*, ſate in *Weſtminſter-hall*. fol. 20.

Munday, the Fifteenth. The Councel brought in a Draught of the Charge. And a Committee appointed, to adviſe therein, and compare the Evidence therewith. *fol.* 21.

And they, and others, to conſider of the manner of bringing the King to his Tryal.

And that day *Tichbourn* delivered a Petition to the Commons, in the name of the Commons in *London*, in *Common-Councel*, differing from the Lord Maior, and Aldermen.

The Subſtance was, for bringing the King to Juſtice. Which was *Ordered*

red, to be Registred in the Books of *Common-Councel*.

Wednesday, the seventeenth. The Charge recommitted to the Committee. *Fol.* 24.

Thursday, the 18th. *Tichburn* excused the absence of Mr. *Steel*: and nothing then else done. *Fol.* 29.

Friday, the 19th. Upon *Millington*'s Report of the Charge, and Form of words for exhibiting it; *Ordered*, That the *Attorney*, or, in his absence the *Solicitour* exhibit it. *Fol.* 30.

And *Waller*, *Harrison*, and others, to appoint thirty to wait upon the *King*; and twenty upon the *President*.

Saturday, the 20th. Forenoon. *Ordered*, That *Mildmay* deliver the Sword of State to *Humphreys*, to bear before the President.

The *Solicitour* presents the Charge engrossed; which being read, and signed by him, was returned to him to be exhibited. And then Adjourned to *Westminster-Hall*.

Westminster-Hall, *Saturday*, the 20th. Afternoon. The King was brought in by *Thomlinson*, attended by *Hacker*, and two and thirty Partisans.

And *Cook* then exhibited the Charge. And the King not owning their Authority, was remanded. And they Adjourned till *Munday*.

Painted-chamber, *Munday*, the 22d. Forenoon. They approved of what their President had done on *Saturday*; and *Resolved*,

That the King should not be suffered to question their Jurisdiction. *Fol.* 50.

Westminster-Hall, Same day, Afternoon. *Cook* prayed, That the King be directed to answer; and, if he refused, That the matter of the Charge be taken *pro confesso*. And the King, not owning their Authority, was remanded. *Fol.* 58.

Westminster-Hall, *Tuesday*, the 23d. Afternoon. The King, not owning their Authority, was remanded; and the Court Adjourned to the *Painted-Chamber*.

And there *Resolved*, They would examine Witnesses, *Fol.* 61.

Painted-chamber, *Wednesday* the 24th. was spent in examining their Witnesses. *Fol.* 66.

Painted-chamber, *Thursday*, the 25th. Afternoon. They examined more Witnesses.

They *Resolved* to proceed to Sentence of Condemnation against the King.

And that this Condemnation, be for being *Tyrant*, *Traitour*, and *Murtherer*.

Murtherer, and *Publike Enemy to the Commonwealth.*

And that the Condemnation extend to Death. *Fol.* 68.

And *Ordered*, That a Sentence, grounded upon these *Votes*, be prepared by *Scot*, *Marten*, *Harrison*, and others.

Painted-Chamber, *Friday*, the 26th. The draught of the Sentence Reported, and agreed; And *Resolved*, That the King be brought the next day to *Westminster-Hall*, to receive it. *Fol.* 96.

Painted-Chamber, *Saturday*, the 27th. Fore-noon. The Sentence being engrossed; *Resolved*, The same should be the Sentence, which should be read, and published, in *Westminster-Hall*, the same day.

That the President should not permit the King to speak after Sentence.

That, after the Sentence read, he should declare it to be the Sence, and Judgment of the Court.

That the Commissioners should thereupon signifie their Consent by standing up.

And, the same day, the Commons *Ordered* the Clerk to bring in the Records of that Judgment to the House. *Journal of the House.*

Westminster-Hall, the same Day, After-noon. The King being brought in, and not owning their Authority; the Sentence was read.

And, upon the Declaration of the President, That it was the Judgment of the Court, they stood up, and Owned it, and Adjourned to the *Painted-Chamber.*

And there appointed *Waller*, and others, to consider of the Time, and Place, for Execution.

Painted-Chamber, *Munday*, the 29th. Upon the report of the Committee, *Ordered*, A *Warrant* be drawn for executing the King in the open Street, before *White-Hall*, the next day; directed to *Hacker*, and others: which was done accordingly. *Fol.* 116.

31. *January*, 1648. *Ordered* by the Commons, That the Lord *Grey*, out of *Haberdashers-Hall*, do dispose of 100 *l.* for the Service of the Common-wealth.

2. *February*, 1648. They *Ordered* in the first place to take into Consideration, and Debate, the House of Lords, for settlement of the Government.

6. *February*, 1648. The House being seventy three; And the *Question* put, Whether that House should take the Advice of the House of Lords in the exercise of the Legislative Power? the House was divided, and it carried, in the *Negative*, by fifteen Voices.

And then *Resolved*; That the House of Peers was useless, and dangerous, and ought to be abolished. And *Ordered* an Act to be brought in, for that purpose.

7. *February*, 1648. They *Declared*, That the Office of a King in this Nation, and to have the Power thereof in a Single Person, was unnecessary, burthensom, and dangerous to the Liberty, Safety, and publike interest of the People: and therefore ought to be abolished.

9. *February*, 1648. They *Ordered*, The Narrative of the Proceedings, and Records, for Tryal of the King, to be forthwith brought into this House.

16. *February*, 1648. They *Ordered*, That the Clerk of that High-Court of Justice be desired to bring in those Proceedings to their House, the next Day.

March, 1648. Sir *Arthur Hesilrig* Reports from the Committee, That *Charls*, and *James Stewart*, Sons of the late King, should dye without Mercy, wheresoever they should be found.

12. *December*, 1650. Mr. *Say* Reported the Proceedings of their High-Court against the King, conteined in a Book, entituled, *A Journal*, &c. which was read at large by their Clerk.

He likewise presented from that Court, The *Act* for Tryal of the King, and the *Precept* for holding the Court.

The Charge was exhibited the twentieth; And,

The Sentence Read the twenty seventh of *January*, 1648.

And thereupon they *Declared*;

That the Persons entrusted in that great Service, had discharged their Trust with great Courage, and Fidelity;

That the Parliament was well satisfied in that Accompt of the Particulars, and Proceedings.

And *Ordered*, That the same Records do remain among the Records of Parliament, That those Proceedings be Engrossed in a Roll, and Recorded among the *Parliament*-Rolls: for transmitting the Memory thereof to Posterity.

And *Resolved*, That their Commissioners for their Great Seal issue a *Certiorari* to their Clerk, to transmit those Prooeedings into the Chancery, there to be on Record.

And that the same be sent by *Mittimus* from thence to other Courts at *Westminster*, and the *Custos Rotulorum* of the Counties, to be Recorded.

In the County of Middlesex. *The* Proceedings *at* Hicks Hall, Tuesday *the 9th of* October, 1660. *in order to the Tryal of the pretended* Judges *of his late Sacred* Majesty.

THe Court being sate; the Commission of *Oyer*, and *Terminer* under the Great Seal of *England*, was first read. It was directed to the Lords, and others hereafter named: *viz.*

Thomas Aleyn, Knight, and Baronet, Lord Mayor of the City of *London*.
The Lord Chancellour of *England*.
The Earl of *South-hampton*, Lord *Treasurer* of *England*.
The Duke of *Sommerset*.
The Duke of *Albemarle*.
The Marques of *Ormond*, Steward of His Majestie's Houshold.
The Earl of *Lindsey*, Great *Chamberlain* of *England*.
The Earl of *Manchester*, *Chamberlain* of his Majesties Houshold.
The Earl of *Dorset*.
The Earl of *Berkshire*.
The Earl of *Sandwich*.
Viscount *Say*, and *Seal*.
The Lord *Roberts*.
The Lord *Finch*.
Denzil Hollis, Esquire.
Sir *Frederick Cornwallis*, Knight, and Baronet, *Treasurer* of His Majesties Houshold.
Sir *Charls Barkly*, Knight, Comptrouler of His Majesties Houshold.
Mr. Secretary *Nicholas*.
Mr. Secretary *Morris*.
Sir *Anthony Ashley-Cooper*.
Arthur Annesley, Esquire.
The Lord Chief *Baron*.
Mr. Justice *Foster*.
Mr. Justice *Mallet*.
Mr. Justice *Hide*.
Mr. Baron *Atkins*.
Mr. Justice *Twisden*.
Mr. Justice *Tyrrel*.
Mr. Baron *Turner*.
Sir *Harbottle Grimston*, Knight, and Baronet.
Sir *William Wild*, Knight, and Baronet,

ronet, Recorder of *London*.
Mr. Serjeant *Brown*.
Mr. Serjeant *Hale*.
John Howel Esquire.

Sir *Geoffry Palmer*, His Majestie's *Attorny General*.
Sir *Heneage Finch*, His Majestie's *Solicitour General*.
Sir *Edward Turner*, Attorny to His Highness the Duke of *York*.
Wadham Windham Esquire.

Edward Shelton Esquire, *Clerk of the Crown*.

The Grand Jury Sworn were

Sir *William Darcy* Baronet, *Foreman*.
Sir *Robert Bolles*, Baronet.
Sir *Edward Ford*, Knight.
Sir *Thomas Prestwick*.
Sir *William Coney*, Knight.
Sir *Charls Sidley* Baronet.
Sir *Lewis Kirk*, Knight.
Sir *Henry Littleton*, Baronet.
Sir *Ralph Bovey*, Baronet.
Edward Chard Esquire.
Robert Giggen Esquire.
John Fotherly Esquire.
Charls Gilbons Esquire.
Thomas Geree Esquire.
Richard Cox Esquire.
Robert Bladwell Esquire.
Henry Mustian Esquire.
John Markham Esquire.
Edward Buckley, Gent.
Francis Bouchier, Gent.
Edward Lole.

Hart, Cryer.

After Proclamation for silence was made, it pleased Sir *Orlando Bridgman*, Lord *Chief Baron* of His Majestie's High Court of *Exchequer*, to speak to the *Jury*, as followeth.

GENTLEMEN,

The Lord Chief Barons Speech.

Gentlemen,

YOu are the *Grand Inquest* for the Body of this County of *Middlesex*: You may perceive by this *Commission* that hath been read, that we are authorized by the King's Majestie to hear, and determine, all Treasons, Felonies, and other Offences, within this County: But because this *Commission* is upon a special occasion, the Execrable Murther of the blessed King, that is now a Saint in Heaven, King *Charls the first*; we shall not trouble you with the Heads of a long *Charge*. The ground of this *Commission* was, and is, from the *Act of Oblivion, and Indempnity*. You shall finde in that *Act* there is an Exception of several persons, who (for their Execrable Treasons, in sentencing to Death, and signing the *Warrant* for the taking away the Life of our said Sovereign) are left to be proceeded against as Traytors, according to the Laws of *England*; and are out of that *Act* wholly excepted, and fore-prized.

Gentlemen, You see these Persons are to be proceeded with, according to the Laws of the Land; and I shall speak nothing to you, but what are the words of the Laws. By the *Statute* of the twenty fifth of *Edward the third* (a *Statute*, or *Declaration* of Treason) it is made High-Treason to compass, and imagine, the Death of the King. It was the ancient Laws of the Nation. In no Case else Imagination, or Compassing, without an Actual Effect of it, was punishable by our Law. *Nihil officit Conatus, nisi sequatur Effectus*; that was the old *Rule* of Law: But in the case of the King; His life was so precious, that the Intent was Treason by the *Common Law*; and Declared Treason by this *Statute*. The reason of it is this, In the case of the Death of the King, the Head of the Commonwealth that's cut off: and what a Trunk, an *inanimate* Lump, the Body is, when the Head is gone, you all know. For the Life of a single man, there's the life of the Offendor; there's some Recompence, Life for Life: But for the Death of the King what Recompence can be made? This compassing, and Imagining, the cutting off the Head of the King is known by some *Overt-Act*. Treason it is in the wicked Imagination, though not Treason Apparent; but when this Poyson swells out of the Heart, and breaks forth into Action: in that case, it's High Treason.

Then what is an Imagination, or compassing of the King's Death? Truly, it is any thing which shews what the Imagination is. Words in

many

many cases, they are Evidences of this Imagination: they are Evidences of the Heart. Secondly, As Words: so if a man, if two men, do conspire to Levy war against the King (and (by the way) what I say of the King, is, as well of the King dead, as living; for, if a Treason be committed in the life of one King, it is a Treason, and punishable in the time of the Successour) Then, I say, in case, not onely of Words; but if they conspire to levy War against the King, there's another Branch of this *Statute*, the *levying of War* is Treason. But, if men shall go, and consult together, and this is to kill the King, to put Him to Death: this Consultation is clearly an Overt-Act to prove this Imagination, or Compassing of the Kings death.

But what will you say then, if men do not only go about to conspire, and consult; but take upon them to Judg, Condemn, nay, put to Death the King? Certainly, this is so much beyond the Imagination and compassing: as tis not only laying the Cockatrice's Egg; but brooding upon it, till it hath brought forth a Serpent. I must deliver to you for plain, and true, Law; That *no Authority, no single person, no community of persons, not the people collectively, or Representatively have any coercive power over the King of* England. And I do not speak mine own Sence; but the words of the Laws unto you. It was the Treason of the *Spencers*, in King *Edward the Seconds* Time, in *Calvins* case, second *Report*. The *Spencers* had an opinion, that all Homage and Allegiance, was due to the King, by reason of the Crown, as they called it. And thereupon (say the *Books*, and *Records*) they drew out this exerable Inference (among others). That if the King did not demean himself according to Right; because he could not be reformed by Law, he might *per aspertee*, that is, *by sharp Imprisonment*: but this was adjudged horrid Treason by two *Acts* of *Parliament*.

Gentlemen, Let me tell you what our *Law-books* say: for there's the Ground, out of which (and the *Statutes* together) we must draw all our Conclusions for matter of Government.

How do they Stile the *King*? They call Him, *The Leiutenant of God*, and many other expressions, in the Book of *Prima Henrici Septimi*. Saies that book there; *The King is immediate from God, and hath no Superiour*. The *Statutes sayes*; That *the Crown of* England *is immediately subject to God, and to no other Power, The King* (says our books,) *He is not onely* Caput Populi, *the Head of the people*; *but* Caput Reipublicæ, *the Head of the Common-wealth, The three Estates*. And, truly, thus our

Statutes,

Statutes speak very fully. Common Experience tells you, when we speak of the King, and so the *Statutes* of *Edward the Third*, we call the King, *Our Sovereign Lord the King : Sovereign*, that is, *Supreme*. And when the Lords, and Commons, in *Parliament*, apply themselves to the King, they use this Expression, *Your Lords, and Commons, your faithful Subjects, humbly beseech*. I do not speak any Words of my own : but the Words of the Laws. Look upon the *Statute primo Jacobi*, there's a Recognition, that the Crown of *England* was lawfully descended on the King, and His Progeny)

(*The* Statute *it self was read, to which it is desired, the* Reader *will be referred.*)

These are the Words of the *Act*. And this is not the first president : for you shall find it *primo* Eli . *cap.* 3. They do acknowledg the Imperial Crown lawfully descended on the *Queen*, the same *Recognition* with this. Before that (because we shall shew you we go upon Grounds of Law in what we say) *Stat.* 24. Hen. 8. *cap.* 12. *Whereas by diverse sundry, old authentique Histories, and Chronicles, it is manifestly declared, and expressed, that this Realm of* England *is an Empire, and so hath been accepted in the world governed by one Supreme head and King, having the Dignity, & Royal Estate of the* Imperial Crown, *of the same, &c.*

25 Hen. 8. *c.* 21. there it is, the people, speaking of themselves, That they *do recognize no Superiour under God, but onely the Kings Grace.*

Gentlemen, You see, if the King be immediate under God, he derives his Authority from no body else: if the King have an Imperial Power; if the King be Head of the Common-wealth, Head of the body Policick; if the body Politick ow him obedience : truly, I think it is an undenied consequence, He must needs be Superiour over them.

Gentlemen, This is no new thing, to talk of an *Emperour*, or an *Imperial Crown*. Do not mistake me all this while : It is one thing to have an *Imperial Crown*, and another thing to govern *absolutely*.

Gentlemen, The *Imperial Crown* is a Word, that is significative : you shall find in all *Statutes*, *primo Eliz.* and the first of King *James*, nay, even in the *Act* of Judicial proceedings of this *Parliament*, it is called an Imperial Crown. They that take the Oaths of Allegiance, and Supremacy, they swear, that they will, to their power, assist, and defend all Jurisdictions, Privileges, Preheminences, and Authorities, granted or belonging to the King, His Heirs, and Successours, or annexed to the *Imperial Crown* of this Realm. What is an *Imperial Crown* ? It is

that, which, as to the Coercive part, is ſubject to no man under God. The King of *Poland* ha's a Crown: But what is it? At his *Coronation* it is conditioned with the people; That, if he ſhall not Govern them according to ſuch *Rules*, they ſhall be freed from their homage, and Allegiance. But the Crown of *England* is, and always was, an *Imperial* Crown, and ſo ſworn.

Gentlemen, As I told you, even now, the *Imperial* Crown is a Word Significative; that Crown, which as to the coercive part, is not ſubject to any Humane Tribunal, or Judicature, whatſoever. And, truly, that this is ſuch an *Imperial* Crown, though I have cited Authorites antient enough, you may find them much more antient. I remember, in the Story of *William Rufus* (you ſhall find it in *Matthew Paris*, and *Eadmerus*) ſome *Queſtion* was about *Inveſtiture* of Biſhops, and the like, the King writes His Letter; *That* &c.

God forbid, I ſhould intend any abſolute Government by this. It is one thing to have an *Abſolute* Monarchy, another thing to have that Goverment *Abſolutely* without Laws, as to any coercive power over the Perſon of the King: for as to *Things*, and *Actions*, they will fall under another conſideration as I will tell you, by and by.

Gentlemen, Since this is ſo, conſider the Oath of Supremacy, which moſt men have taken, or ſhould take. All men, that enter into the *Parliament*-Houſe, they are expreſly enjoyned by *Statute* to take the Oath of Supremacy. What ſays that Oath? We ſwear, that *The King is the onely Supreme Governour within this Realm, and Dominions.* He is *Supreme*, and the *onely Supreme*: and, truly, if He be *Supreme*, there is neither *Major*, nor *Superior*. I urge this the more, leſt any Perſon, by any Miſconſtruction, or inference, which they might make from ſomething, that hath been Acted by the Higher Powers, they might draw ſome dangerous Inferences, or Conſequences, to colour, or ſhadow over, thoſe Murtherous, and Traiterous Acts, which afterwards they committed. They had no Authority. But as I told you, though I do ſet forth this, and declare this to you, to let you know, that the King was immediately ſubject to God, and ſo was not puniſhable by any Perſon; yet, let me tell you, there is that excellent Temperament in our laws, that, for all this, the King cannot rule, but by His Laws. It preſerves the King, and his Perſon, and the peoples Rights.

There are three things, touching which the Law is converſant: *Perſona, Res, & Actiones*; Perſons, Things, and Actions. For the

Perſon

Person of the King; He is the Supreme head, He is not punishable by any coercive Power: the Laws provide for that. *The King can do no wrong*, it is a *Rule* of Law, it is in our *Law-books* very frequent: 22d. of *Edward the Fourth*, Lord *Coke*, and many others. If he can do no Wrong He cannot be Punished for any wrong, The King, He hath the infirmities, and weakness. of a man: but he cannot do any injury, at least not considerable, in Person; He must do it by Ministers, Agents, Instruments. Now the Law, though it provide for the King; yet if any of his Ministers do wrong, though by his command, they are punishable. The King cannot arrest a man, as He cannot be Arrested Himself: but, if He arrest me by another man, I have remedy against this man, though not against the ing: and so, He cannot take away my *Estate*. This as to the *Person* of the King: He is not to be touched; *Touch not mine Anointed.*

I come to *Things*. If the King claim a Right, the King he must sue according to His Laws, the King is subject to the Laws in that case, His Possessions shall be tryed by Juries. If He will try a man for His Fathers Death, you see he will try them by the Laws. The Law is the Rule, and Square of His actions, and by which He, Himself, is judged.

Then for *Actions*: that is, such *Actions*, whereby Rights, and Titles, are prosecuted, or recovered, the King cannot judge in Person, between man and man, He does it by his Judges, and upon Oath, and so in all cases whatsoever; If the King will have His Right, it must be brought before His Judges. Though this is an *Absolute* Monarchy: yet this is so far from infringing the Peoples Rights; that the People, as to their Properties, Liberties, and lives, have as great a priviledge, as the King. It is not the sharing of Government, that is for the Libertie, and Benefit of the people: but it is, how they may have their lives, and Liberties, and Estates, safely secured under Government. And you know, when the Fatness of the *Olive* was laid aside, and we were Governed by *Brambles*: these Brambles, they did not onely tear the *Skin*; but tore the *Flesh*, to the very Bone.

Gentlemen I have done in this Particular, to let you see, that the Supreme Power, being in the King, the King is immediately under God, owing His Power to none, but God. It is true (b'essed be God) we have as great Liberties, as any People have in *Christendom*, in the World:

but

but let us own them, where they are due. We have them by the Conceſſions of Our Princes. Our Princes have granted them: and the King, now; He in them hath granted them likewiſe.

Gentlemen, I have been a little too long in this, and yet I cannot ſay, it is too long: becauſe it may clear miſunderſtanding; ſo many Poyſonous Opinions having gone abroad. To come a little nearer. If we conſider; ſuppoſe there were the Higheſt Authority; but, when we ſhall conſider this horrid Murther (truly, I cannot almoſt ſpeak of it, but —— —— *Vox faucibus hæret.*) When we ſhall conſider, that a few Members of the *Houſe of Commons*, thoſe, that had taken the Oath of *Supremacy*; and, thoſe that had taken the Oath of *Allegiance*, that was to defend the King, and His Heirs, againſt all Conſpiracies, and Attempts, whatſoever, againſt His, and their Perſons, Their Crowns and Dignities: not onely againſt the *Pope's* Sentence, as ſome would pretend; but, as otherwiſe, againſt all Attempts, and Conſpiracies; not onely againſt His perſon, Crown, and Royal Dignity, nor *Pope's* Sentence, nor, onely in order to the Profeſſion of Religion, but abſolutely: or otherwiſe, that is, whatſoever Attempts, by any Power, Authority, or Pretence whatſoever. I ſay, when a few Members of the *Houſe of Commons*, not an eighth part of them, having taken theſe Oaths, ſhall aſſume upon themſelves an Authority; an Authority, what to do? ſhall aſſume to themſelves an Authority to make Laws, which was never heard before; Authority to make Laws: what Laws? a Law for an *High Court of Juſtice*, a Law for lives, to Sentence mens lives; And whoſe Life? the Life of their Sovereign: upon ſuch a King, who, as to them, had not onely redreſſed long before, at the beginning of the *Parliament* all Grievances, that were, and were imaginable, taken away the *Star-Chamber*, *High-Commiſſion*-Court, and about *Shipping*: ſuch a King, and after ſuch Conceſſions, that He had made in the Iſle of *Wight*; when He had granted ſo much, that was more then the People would have deſired. When theſe few *Commons* not onely without, but excluding the reſt of the *Commons*; not onely without, but excluding the reſt, but rejecting the *Lords* too, that then ſat: When theſe *few Commons* ſhall take upon them this Authority, and, by colour of this, their King, Soveraign, Liege Lord, ſhall be Sentenced, put to Death; and that put to Death, even as their King, and Sentenced as their King; put to Death as their Knig, and this before His own Door, even before that Place, where He

uſed

uſed in *Royal Majeſty* to hear Embaſſadors, to have His Honorable Entertainments, that this King ſhall be thus put to Death at Noon-day it is ſuch an aggravation of Villany; that, truly, I cannot tell what to ſay. No ſtory, that ever was, I do no not think any *Romance*, any Fabulous *Tragedy*, can produce the like. *Gentlemen*, If any Perſon ſhall now come, and ſhroud himſelf under this pretended Authority, or ſuch a pretended Authority, you muſt know, that this is ſo far from an Excuſe, that it is an Height of Aggravation. The Court of *Common*

s the Common Shop for Juſtice: in that Court an appeal is brought for Murther, which ought to have been in the *King's Bench*, the Court gives Judgment, the Party is Condemned, and Executed: in this Caſe, it is Murther in them, that executed; becauſe they had no lawful Authority. I ſpeak this to you, to ſhew you, that no man can ſhroud himſelf, by colour of any ſuch falſe, or pretended, Authority. I have but one thing more to add to you upon this head; and that is (which I ſhould have ſaid at firſt) If two, or more, do Compaſs, or Imagine the King's Death; if ſome of them go on ſo far, as to Conſultation; if others of them go further, they Sentence, and Execute, put to Death: in this Caſe they are all Guilty; the firſt Conſultation was Treaſon. I have no more to add, but one Particular, a few Words.

As you will have Bills preſented againſt thoſe; for Compaſſing, Imagining, Adjudging the King: ſo poſſibly you may have Bils preſented againſt ſome of thoſe, for Levying War againſt the King: Levying of war, which is another Branch of the *Statute* of 25th. of *Edward the Third*. It was but Declarative of the Common Law: it was no new Law. By that Law it was treaſon to *Levy War* againſt the King. But to levy War againſt the Kings Authority, you muſt know is Treaſon too. If men will take up Armes upon any Publique pretence; if it be to expulſe Aliens; if but to pull out Privy Counce lours; if it be, but againſt any Particular Laws, to reform Religion, to pull down Encloſures: in all theſe caſes, If Perſons have aſſembled themſelves, in a Warlike manner, to do any of theſe Acts; this is Treaſon, and within that Branch of Levying War againſt the King This was adjudged in the late Kings Time in *Berſtead's* caſe, Queen *Elizabeth's*, *Henry* the *Eighth's*, former Times. King *Jame's* Time: much more; if men will go, not onely to Levy War againſt the King, but againſt the Laws, all the Laws ſubvert all the Laws, to ſet up new Laws, Models of their own. If any of

theſe

these cases come to be presented to you, you know what the Laws are. To conclude, you are now to enquire of Blood, of Royal Blood, of Sacred Blood; Blood like that of the *Saints* under the *Altar*, crying *Quousque, Domine; How long, Lord, &c.* This Blood crys for Vengeance, and it will not be appeased without a Bloody Sacrifice.

Remember but this, and I have done: I shall not press you upon your Oaths; you are Persons of Honour; you all know the Obligation of an Oath. This I will say, that he, that conceals, or favours, the guilt of Blood, takes it upon himself; wilfully, knowingly, takes it upon himself. And we know, that, when the *Jews* said, *Let his blood be on us and our seed*, it continued to them, and their Posterity, to this day.

God save the King. Amen, Amen.

His Lordships *Speech* being ended; *Thomas Lee* of the *Middle-Temple London*, Gentleman, was called to give in the Names of his *Witnesses*. The names of the *Witnesses* then, and there sworn, follow;

William Clark Esq;
James Nutley Esq;
Mr. *George Masterson* Clerk.
George Farrindon.
Hercules Huncks.
Dr. *William King.*
Martin Foster.
John Baker.
Stephen Kirk.
Richard Nunnelly.
John Powel.
John Throckmorton.
John Blackwel.
Ralph Hardwick.
Thomas Walkley, Gentleman.
Holland Simpson.
Benjamin Francis.
Colonel *Matthew Thomlinson.*
Griffith Bodurdo Esq;
Samuel Bordman.
Robert Carr Esq;
Richard Young.
Sir *Purbeck Temple.*
John Rushworth Esq;
John Gerrard
John Hearn.
Mr. *Coitmore.*
Mr. *Cunningham.*
Mr. *Clench.*
William Jessop Esq;
Edward Austin.
Darnel Esq;
Mr. *Brown.*
Thomas Tongue.
John Bowler.
Mr. *Sharp.*
Mr. *Lee.*
Robert Ewer.
John King.
Edward Jolley.
Mr. *Gouge.*
Anthony Mildmay Esq;

The *Grand Jury* returned the Indictment *Billa Vera.*

The *Court* adjourned to the *Old-Bailey*, 10th of *October*,

The

The 10. of *October*, 1660.

SIR *John Robinson*, Knight, *Lieutenant* of his Majesties *Tower of London*, according to his *Warrant* received, delivered to *Mr. Sheriff* the Prisoners hereafter named; who were (in several Coaches) with a strong Guard of Horse, and Foot conveyed to *Newgate*, and about nine of the clock in the Morning, delivered to the Keepers of that Prison, and thence brought to the *Sessions-house* in the *Old-Baily*, *London*, where the Commissioners of *Oyer*, and *Terminer*, were in Court assembled, and where their *Indictment* was publickly read by *Edward Shelton* Esq; *Clerk of the Crown*.

Sessions-House, in the *Old-Baily*, 10. *October*, 1660.

THE Court being Assembled, and Silence commanded, the *Commission* of *Oyer* and *Terminer*, was again read. After which Sir *Hardress Waller*, Colonel *Thomas Harrison*, and Mr. *William Heveningham* were brought to the *Bar*, and commanded to hold up their Hands: which Sir *Hardress Waller*, and Mr. *Heveningham* did; but *Harrison*, being commanded to hold up his Hand, answered, *I am here*: and said,

My Lord, if you please, I will speak a Word——

Court. Hold up your hand, and you shall be heard in due time. Mr. *Harrison*, the course is, That you must hold up your hand first. *And then he held up his hand.*

The *Indictment* was read, purporting; That *He, together with others, not having the fear of God before his Eyes, and being instigated by the Devil, did Maliciously, Treasonably, and Feloniously, contrary to his due Allegiance, and bounden Duty, sit upon, and condemn our late Soveraign Lord, King* Charls the First, *of ever Blessed Memory: and also did upon the thirtieth of* January, 1648. *Sign and Seal a Warrant for the Execution of His late Sacred and Serene Majesty, of Blessed Memory. Where also*, &c.

Clerk of the Crown. How sayest thou, Sir *Hardress Waller*? Art thou *guilty* of that Treason whereof thou standest *Indicted*; and for which thou hast now been Arraigned? or *Not guilty*.

Sir Hardress Waller. *My Lords, I dare not say*, 'Not guilty; *but, since that in a Business of this nature we have no councel or Advice, and being not able to speak to matter of Law*——

Lord chief Baron. I am loth to interrupt you: but this is the course; you have heard the *Indictment* read, and the course is, you must

I lead *guilty*, or *Not Guilty*. There is no *Medium*: *Guilty* or *Not guilty*. It is that which is the Law, and the case of all men. Are you *guilty*? or *Not Guilty*?

Sir Hard. Waller. *I may confess my self* Guilty *of some Particulars in that* Indictment; *but not of all: for so, instead of discharging, I shall wound my Conscience.*

Clerk. Are you, *Guilty*? or *Not guilty*?

Sir Hard. Waller. *If I might have that Liberty to* ——

Court. You shall have that liberty, that any Subject of the Nation can have, or can challenge. No man, standing at the Bar, in that condition you are, must make any other answer to the *Indictment*, then *guilty*, or *Not guilty*. It's the Common case of all men. Your Confession must be Plain, and direct, Either *Guilty*, or *Not Guilty*.

Sir Hard. Waller. *My Lord, I do desire some time to consider of it: for it is a great Surprisal.*

Court. You have had time enough to consider of it; you must follow the Directions of the *Court*, *Guilty*, or *Not Guilty*? You must not thus Discourse of being Surprised: for these Discourses are contrary to all *Proceedings* of this Nature.

Clerk. How say you Sir *H. Waller*? Are you *guilty*, or *Not guilty*?

Sir Hard. Waller. *I dare not say*, Not guilty.

Clerk. Will you confess then?

Sir Hard. Waller. *I would be glad to be understood* ——

Court. Your plea must be direct: *guilty*, or *Not guilty*.

Sir Hard. Waller. *Shall I be heard, my Lord*?

Court. Yes, upon your Trial. There is but two ways. Plead *Not guilty*: or confess it. Sir *Hardress Waller*, we would not have you to be deceived. If you confess, and say, you are *guilty*: there is nothing then, but Judgment, If you say *Not guilty*; then you shall be heard with your Evidence. Consider with your self. Plead *Not Guilty*: or confess, and say, you are *guilty*.

Sir Hard. Waller. *My Lord, It puts me upon a great contest with my self. I shall be very free to open my Heart* ——

Court. Sir, you must plead *Guilty*, or *Not Guilty*.

Sir Hard Waller. *My Lord, my condition differs from others. I am a Stranger, I have been these thirty years transplanted into* Ireland; *which has made me unacquainted with the affairs of the Law here.*

Court. You must keep to the course of the Law. Either *guilty*, or

Not

Not guilty. There is but one of these two Pleas to be made.

Sir Hard. Waller. I *dare not say* Not guilty.

Court. There are but these three things to be considered. Either you must say *Guilty*, which is *Confession*, and then there remains no more, but *Judgment*: or *Not guilty*; and then you shall be heard: or *Judgment* will pass for your standing *Mute*, which is all one, as if you had confessed.

Sir Hard. Waller. *In as much as* I *have said*, I *dare not say* Not Guilty: I *must say* Guilty.

Clerk. You say, you are *guilty*. You confess the *Indictment*.

Sir Hardress Waller. *Yes*.

Clerk. *Thomas Harrison*. How saiest thou? Art thou *guilty* of the Treason, whereof thou standest *Indicted*, and art now Arraigned? or *Not Guilty*.

Tho. Harrison. *My Lords, have* I *liberty to speak?*

Court. No more (at this time) then *Guilty*, or *Not Guilty*. Master *Harrison*, You have heard the Direction before. We can give you but the same *Rule*. If you plead *Not guilty*; you shall be heard at large: if *Guilty*; you know what remains.

Tho. Harrison. *Will you give me leave to give you my Answer in my own words*.

Lord *Chief Bar*. There is no answer but what the Law directs. It is the same with you, as with all others, or as I would desire, if I were in your condition. You must Plead *Not guilty*: or, if you confess *guilty*, there must be *Judgment* upon your confession. The same *Rule* for one, must be for another.

Tho. Harrison *You express your* Rule *very fair, as well to me, as this Gentleman* (pointing at Sir *Hardress Waller*) *but* I *have something to say to your Lordships, which concerns your Lordships as well as my self*.

Court. You must hold, and plead *guilty*, or *Not guilty*. If you go otherwise (as I told you before) it will be, as if you pleaded not at all, and then *Judgment* will pass against you. The Law gives the words, frames your Answer, it is none else, but the Laws, *Guilty*, or *Not Guilty*.

Tho. Harrison. *My Lord*, I *have been kept close Prisoner near these three Moneths, that no body might have Access to me. Do you call me to give you a Legal Answer; not knowing of my Trial till nine of the clock last night, and brought away, from the* Tower, to this place, *at six of the clock in this morning*.

Court. You must give your direct Answer, *Guilty*, or *Not guilty*. You cannot say, it is sudden, or unprovided. You spend time in vain. You trouble the Court. You must Plead *Guilty*, or *Not Guilty*. We must not suffer you to make Discourses there. You must Plead either *Guilty*, or *Not Guilty*

Clerk. Are you *guilty?* or *Not guilty?*

Tho. Harrison. *I am speaking Shall I not speak two words?*

Court. If you will not put your self upon your Tryal, you must expect that course, that the Law directs.

Tho. Harrison. *May it please your Lordships, I am now* ——

Clerk. Are you *guilty*, or *Not Guilty?*

Tho. Harrison, *I desire to be advised by the Law. This is a special Case.*

Court. The Law allows nothing now; but to plead *guilty*, or *Not guilty*.

Court. You must plead to your *Indictment*. If it be Treason, it cannot be justified; if it be justifiable, it is not Treason: Therefore Plead *guilty*: or *not guilty*.

Tho. Harrison. *Give me advice in this*——

Clerk. *Tho. Harrison*, Are you *guilty?* or *Not Guilty?*

Tho. Harrison, *I would willingly render an account of all my Doings.*——

Clerk. Are you *Guilty?* or *Not guilty?*

Court. You have been acquainted with the Legal Proceedings. You never found in all your Experience; that any Prisoner at the Bar, for Felony, or Treason, was suffered thus to discourse, or to answer otherwise, then *guilty*, or *Not guilty*.

Clerk. Are you *guilty*, or *Not guilty?*

Mr. Sol. Gen. *I do beseech your Lordships, he may Plead. Peradventure he knows his case so well; that he thinks it as cheap to desie the Court, as Submit to it.*

Court. We must enter your standing *Mute*: thats *Judgment*.

Clerk. Are you *guilty*, or *Not guilty?*

Tho. Harrison. *Will you refuse to give me any Satisfaction* ——

Court. Are you *guilty*, or *Not guilty?*

Tho. Harrison. *Will you give me your Advice?*

Court. We do give you Advice. The Advice is: there is no other Plea; but *guilty*, or *Not guilty*. You shall be heard, when you have put your self upon your Trial.

Clerk. Are you *guilty?* or *Not guilty?*

Tho. Harrison. *You do deny me Councel, then I do plead* Not guilty.

Clerk.

Clerk. You plead *Not guilty.* Is this your Plea?

Th. Harriſon. *Yes.*

Clerk. How will you be tried?

Th. Harriſon. *I will be tryed according to the Laws of the Land.*

Clerk. Whether by *God,* and the *Countrey?*

Lord chief Baron. *Now I muſt tell you: if you do not put your ſelf upon your Countrey; you have ſaid nothing.*

Clerk. How will you be tried?

Th. Harriſon. *It is to put my ſelf upon what you pleaſe to put me upon.*

Court If you underſtand (you are not every man, you are verſed in Proceedings of Law) you know, you muſt put you ſelf upon the Trial of *God,* and your *Countrey:* if you do not; it is as good, as if you had ſaid nothing.

Th. Harriſon, *You have been miſinformed of me* ——

Court. You have pleaded *Not guilty.* That, which remains, is; you muſt be tried by *God,* and the *Countrey:* otherwiſe, we muſt Record your ſtanding *Mute.*

Clerk. How will you be Tried?

Th. Harriſon. *I will be tried according to the ordinary courſe.*

Clerk. Whether by God, and the Countrey? You muſt ſpeak the Words.

Th. Harriſon. *They are vain words* ——

Court. We have given you a great deal of Liberty, and Scope; which is not uſual. It is the courſe, and proceedings of Law; if you will be tried, you muſt put your ſelf upon *God,* and the *Countrey.*

Clerk. How will you be tried?

Th. Harriſon. *I do offer my ſelf to be Tried in your own way, by* God *and my* Countrey.

Clerk. God ſend you a good deliverance.

Clerk. *William Heveningham,* hold up your hand. How ſayeſt thou, Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *indicted,* and art now arraigned? or *Not guilty?*

Will. Heveningham. *Not guilty.*

Clerk. How will you be Tried?

Will. Heveningham, *By* God, *and the* Countrey.

Clerk. God ſend you a good deliverance.

Sir

Sir Hard. Waller *then presented his Petition to the Court, directed,* To the Kings Majestie, and the Parliament: *which was received; but not at this Court read. And then the three Persons aforesaid were dismissed.*

Clerk, Bring to the Bar *Isaac Pennington* Esq; *Henry Marten* Esq; *Gilbert Millington* Gentleman, *Robert Tichborn* Esq; *Owen Roe*, Esq; and *Robert Lilburn* Gentleman, Who were called, and appeared at the Bar, and, being commanded severally, held up their hands.

The Indictment *was read again, as to the former Persons.*

Clerk. *Isaac Pennington*, Hold up thy hand. How sayest thou? Art thou *guilty* of the Treason, whereof thou standest *Indicted*, and art now Arraigned? or *Not guilty*?

Isaac Pennington. *Not guilty*, my Lord.

Clerk. How will you be tryed?

Isaac Pennington. *By God, and the Countrey.*

Clerk. God send you a good deliverance.

Clerk. *Henry Martin*, How sayest thou? Art thou *guilty* of the Treason, whereof thou standest *Indicted*, and art now Arraigned? or *Not guilty*?

Hen. Marten. *I desire the benefit of the Act of* Oblivion ——

Clerk. Are you *guilty*? or *Not guilty*?

Court. You are to understand, the Law is this, the same to you and every one; You are to plead *Guilty*, or *Not guilty*. If you will demand the benefit of the *Act of Oblivion*; it is a confession of being *Guilty*.

Hen. Marten. *I humbly conceive the Act of* Indempnity ——

Court. You must plead *Guilty*, or *Not guilty*.

Hen. Marten. *If I plead, I lose the benefit of that* Act.

Court. You are totally excepted out of the *Act*.

Hen. Marten. *If it were so I would Plead. My name is not in that* Act.

Court. *Henry Martin* is there.

Mr. Sollicitor Gen. *Surely he hath been kept close Prisoner indeed, if he hath not seen the* Act of Indemnity. *Shew it him.*

Mr. *Shelton* opening the *Act*;

Court. How is it written?

Clerk. It is *Henry Martin.*

And then the Act *was shewed to the said* Mr. Marten.

Hen. Marten. Henry Martin? *My name is not so: it is* Harry Marten.

Court. The difference of the Sound is very little. You are known by that Name of *Martin.*

Hen. Marten. *I humbly conceive all* Penal Statutes *ought to be understood Literally.*

Clerk. Are you *Guilty*, or *Not guilty*?

Hen. Marten. *I am not* Henry Martin.

Clerk. Are you *guilty*, or *Not guilty*?

Court. Be advised. The effect of this Plea will be *Judgement.*

Here Mr. Sollicitor Gen. cited somewhat Parallel to this, in a *Case* formerly of *Baxter*; where the Name was *Bagster*, with an *S*; and adjudged all one, being of the same sound.

Clerk. Are you *guilty*? or *Not guilty*?

Hen. Marten. *My Lord, I desire Council. There will arise Matter of Law, as well as Fact.*

Court. You are *Indicted* for *Treason*; for a Malicious, Trayterous compassing, and Imagining the King's Death. If you have any thing of Justification, plead *Not guilty*; and you shall be heard: for, if it be Justifiable, it is not *Treason.* The *Rule* is, Either you must plead *Guilty*, and so Confess; or *Not guilty*, and put your self upon your Trial: there is no *Medium.*

Hen. Marten. *May I give any thing in* Evidence *before* Verdict?

Court. Yes, upon your Trial, you may give any thing in *Evidence*, that the Law warrants to be *lawful Evidence.*

Clerk. Are you *Guilty*, or *Not guilty*?

Court. Understand one thing; because I would not have you mistaken: you cannot give in *Evidence* the *Misnomer*; but any thing to the matter of *Fact.*

Hen. Marten. *I submit, and plead* Not guilty.

Clerk. How will you be tried?

Hen. Marten. *By God, and the Countrey.*

Clerk. God send you a good deliverance.

Clerk.

Clerk. *Gilbert Millington*, Hold up your hand. How ſaieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *indicted*, and art now arraigned? or *Not guilty*?

Gilb. Millington, *My Lord, I am an ancient man, and deaf. I humbly crave your Lordſhips pardon, to hear me a few words. I will promiſe, it ſhall be* pertinent *enough*

Mr. Sol. Gen. Impertinent enough, *he means.*

Court. You muſt plead either *Guilty*, and ſo confeſs it, or *Not guilty*, and then you ſhall be heard any thing for your juſtification.

Clerk. Are you *Guilty*? or *Not guilty*?

Gilb. Millington. *I deſire I may* ——

Court. There is nothing, you can ſay, but *Guilty*, or *Not guilty*. All other Diſcourſes turn upon your ſelf.

Clerk. Are you *Guilty*? or *Not guilty*?

Gilb. Millington. *You might enlighten me in ſome ſcruples. Does my pauſe trouble you much? I ſhould not be long.*

Court. Your particular caſe cannot differ from others.

Clerk. Are you *Guilty*? or *Not guilty*?

Gilb. Millington. *There are ſome things in the Indictment, that I can ſay* Not Guilty *to. There are others, that I muſt deal ingenuouſly, and confeſs them.*

Clerk. Are you *Guilty*, in Manner, and Form, as you are indicted? or *Not guilty*?

Gilb. Millington. *Not guilty.*

Clerk. How will you be tried?

Gilb. Millington. *By* God, *and the* Countrey.

Clerk. God ſend you a good deliverance.

Clerk *Robert Tichborn*, Hold up your hand, How ſaieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt indicted, and art now arraigned? or *Not guilty*?

Tichborn. *My Lord, I have been a very cloſe Priſoner, without any advice. I am altogether unable in Law to ſpeak.*

Court. You know the Courſe hath been delivered to you by others, I will not trouble you with it. It is neither long, nor ſhort: the Law requires your anſwer, *Guilty*, or *not guilty*.

Tichborn. *Spare me but one Word. If, upon the Trial, there ſhall appear to be matter of Law, ſhall I have the liberty* of Councel *for it?*

I shall be put, in my own Case, to Plead matter of Law against those noble Persons, who Plead on the other part: I shall but prejudice my self, and therefore I crave Councel.

Court. You must Plead *Guilty*, or *Not guilty.*

Tichbourn. *I have no Reason, nor Design to displease you. I am sure, I am no waies able to Plead with equalness, in Point of* Law, *with those Noble Gentlemen. To the Matter of* Fact, *this is my Plea*; In Manner, and Form, that I stand Indicted, I am *Not guilty.*

Clerk. How will you be Tried?

Tichbourn. *By* God, *and the* Countrey.

Clerk. God send thee a good Deliverance.

Clerk. Owen Roe, Hold up your Hand. How saiest thou? Art thou Guilty of the Treason, whereof thou standest *Indicted*, and art now Arraigned, or *Not guilty*?

Owen Roe. *My Lord, there hath been so much said already by others, I think, I need say no more.* In Manner, and Form, as I am now Indicted, *I* Plead *Not Guilty.*

Clerk. How will you be Tried?

Owen Roe. *By* God, *and the* Countrey.

Clerk. God send you a good Deliverance.

Clerk. *Robert Lilburn*, Hold up your Hand. How saiest thou? Art thou *Guilty* of the Treason, whereof thou standest *Indicted*, and art now Arraigned? or *Not guilty*?

Robert Lilburn. *I desire, in regard that, being so close a Prisoner for twenty daies, that no body ha's been suffered to advise with me* ——

Lord Chief Barron. I must interrupt you. You must not mispend the time. Understand the Law. You must Plead *guilty*, or *Not guilty.*

Rob. Lilburn. *Will you give me leave to desire Councel before I Plead, to advise me touching my Plea.*

Clerk. Are you *Guilty*? or *Not guilty*?

Rob. Lilburn. *I desire Councel* ———

Court. Take heed; if that be your Answer, *You desire Councel*, and do not Plead, and that be Recorded, *Judgment* will pass against you. There is nothing to Plead; but *Guilty*, or *Not guilty.* If *Not guilty*; what you have to say will be heard.

Rob. Lilburn. *If you over-rule me, I must submit.*

Court. Do not let such Language fall from you: it is improper here.

The *Law* gives us a *Rule*, *The Prisoner must Plead* Guilty, *or* Not guilty.

Rob. Lilburn. *I say then, in* Manner, *and* Form, *as I am Indicted, I am* Not guilty.

Clerk. How will you be Tried?

Rob. Lilburn. *By* God, *and the* Countrey.

Clerk. God send you a good Deliverance.

Clerk. Bring to the Bar *Adrian Scroop, John Carew, John Jones, Thomas Scot, Gregory Clement,* and *John Cook.*

Who were brought accordingly, and, being commanded, severally held up their hands at the Bar.

The Indictment *was read to the Persons at the* Bar, *as before.*

Clerk. *Adrian Scroop,* Hold up thy Hand. How saiest thou? Art thou *Guilty* of the Treason, whereof thou standest *Indicted,* and art now Arraigned? or *Not guilty?*

Adr. Scoop. *My Lord,* Not guilty.

Clerk. How will you be Tried?

Adr. Scroop. *By* God, *and the* Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *John Carew,* Hold up thy Hand. How saiest thou? Art thou *Guilty* of the Treason, whereof thou art *Indicted,* and art now Arraigned? or *Not guilty?*

John Carew. *There is some special matter in that* Indictment, *that ought not to be before* ——

Court. Are you *Guilty,* or *Not guilty?*

John Carew. *Saving to our Lord* Jesus Christ *his Right to the Government of these Kingdoms* ——

Clerk. Are you *Guilty?* or *Not guilty?*

John Carew. *I say, I am* Not guilty?

Clerk. How will you be Tried?

John Carew. *How would you have me?*

Clerk. Will you be Tried by *God,* and the *Countrey?*

John Carew. *I, if you will.*

Clerk. You must say the words. How will you be Tried?

John Carew. *By* God, *and the* Countrey.

Clerk. God send you a good Deliverance.

Clerk.

Clerk. *John Jones*, Hold up thy Hand. How ſaieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

John Jones. Not Guilty, *my Lord*.

Clerk. How will you be Tried?

John Jones. *By* God, *and the* Countrey.

Clerk. God ſend you a good Deliverance.

Clerk. *Thomas Scot*, Hold up thy Hand. How ſaieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

Th. Scot. *Truly, I cannot call it* Treaſon: *and therefore I Plead* Not guilty.

Clerk. How will you be Tried?

Th. Scot. *By* God, *and the* Countrey.

Clerk. God ſend you a good Deliverance.

Clerk. *Gregory Clement*, Hold up your Hand. How ſaieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

Greg. Clement. *My Lord, I cannot excuſe my ſelf in many Particulars: but, as to my* Indictment, *as there it is, I Plead* Not Guilty.

Clerk. How will you be Tried?

Greg. Clement. *By* God, *and the* Countrey.

Clerk. God ſend you a good Deliverance.

Clerk. *John Cook*, Hold up thy Hand. How ſaieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

John Cook. *I humbly conceive, that this is now time to move for* Councel *for matter of* Law ——

Court. You know too well the manner of the *Court*. Are you *Guilty*? or *Not guilty*?

John Cook. *Not guilty*?

Clerk. How will you be Tried?

John Cook. *By* God, *and the* Countrey.

Clerk. God ſend you a good Deliverance.

Clerk. Bring *Edmund Harvey, Henry Smith, John Downs, Vincent Potter,* and *Auguſtine Garland,* to the Bar.

Who were brought accordingly, and, being commanded, ſeverally held up their Hands. The Indictment *was read to them.*

Clerk. *Edmund Harvey,* Hold up your Hand. How faieſt thou? Art thou *Guilty* of the Treaſon, whereof thou ſtandeſt *Indicted,* and for which thou art now Arraigned? or *Not guilty?*

Edmund Harvey. Not guilty, *my Lord.*

Clerk. How will you be Tried?

Edmund Harvey. *By* God, *and the* Countrey.

Clerk. God ſend you a good Deliverance.

Clerk. *Henry Smith,* Hold up thy Hand. How faieſt thou? Art thou *Guilty* of the Treaſon, whereof thou art *Indicted,* and for which thou art now Arraigned? or *Not guilty?*

Henry Smith. Not guilty, *my Lord.*

Clerk. How will you be Tried?

Henry Smith. *By* God, *and the* Countrey.

Clerk. God ſend you a good Deliverance.

John Downs, Vincent Potter, Auguſtine Garland, *upon the Queſtion, preſently Pleaded* Not guilty, *and put themſelves on* God, *and the* Countrey, *to be Tried.*

Clerk. Set to the Bar *George Fleetwood, Simon Meyn, James Temple, Peter Temple, Thomas Wayt, Hugh Peters, Francis Hacker,* & *Daniel Axtel.*

Who being at the Bar, held up their Hands according to Order; afterward the Clerk read the Indictment *againſt the ſaid Perſons. Which being ended, he proceeded in this manner,*

Clerk. *George Fleetwood,* Hold up thy Hand. What faieſt thou? Art thou *guilty* of this horrid Treaſon, whereof thou ſtandeſt *Indicted,* and art now Arraigned? or *Not guilty?*

George Fleetwood. *My Lord, I came in upon his Majeſtie's* Proclamation.

Clerk. Art thou *Guilty?* or *Not guilty?*

George Fleetwood. *I muſt Confeſs, I am* Guilty? (*And thereupon he delivered a* Petition *in, to the* Court; *which he ſaid was directed* To his Majeſty, and the Parliament: *and the* Court *did receive it accordingly.*)

Clerk. Set him aſide.

Clerk. *Simon Meyn,* Hold up thy Hand, What faieſt thou? Art thou

thou *Guilty* of this horrid Treaſon, whereof thou ſtandeſt *Indicted*, and art now Arraigned? or *Not guilty*?

Sim. Meyn. Not guilty. *I came in upon His Majeſtie's* Proclamation, *my Lord.*

Clerk. How wilt thou be Tried?

Sim. Meyn. *By* God, *and the* Countrey.

Clerk. God ſend thee a good Deliverance.

Clerk. *James Temple*, Hold up thy Hand. What ſaieſt thou? Art thou *Guilty* of this horrid Treaſon, whereof thou ſtandeſt *Indicted*, and art now Arraigned? or *Not guilty*?

James Temple. *Not guilty*?

Clerk. How wilt thou be Tried?

James Temple. *By* God, *and the* Countrey.

Clerk. God ſend thee a good Deliverance.

Clerk. *Peter Temple*, Hold up your Hand. How ſaieſt thou? Art thou *guilty* of the Treaſon, whereof thou ſtandeſt *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

Peter Temple. *Not guilty.*

Clerk. How wilt thou be Tried?

Peter Temple. *By* God, *and the* Countrey.

Clerk. God ſend thee a good Deliverance.

Clerk. *Thomas Wayt*, Hold up your Hand. How ſaieſt thou? Art thou *guilty* of the Treaſon, whereof thou ſtandeſt *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

Th. Wayt. *I deſire to be heard a word, or two,* ———

Court. There is a *Rule* of *Law*, which is ſet to us, and you; that, in all theſe *Caſes*, you are to Plead *Guilty*, or *Not guilty*. When you have Pleaded: if *Not guilty*; you may ſpeak what you will in its proper Time.

Clerk. Are you *Guilty*? or *Not guilty*?

Th. Wayt. *I pray, let me be heard a word. I am very unwilling to ſpend time; knowing you have a great deal of Buſineſs. I am very unwilling to deprive my ſelf of my Native Right. I ſhall ſpeak nothing, but that, which is Truth.*

Court. Do not *Preface* then; but ſpeak what you would ſay.

Th.

Th. Wait. *My Lord, my Case is different from the rest.*

Court. Whatsoever the *Case* be, you have no *Plea* to us; but *guilty*, or *Not guilty*. We can go no other way. The *Law* sets out your *Plea*.

Th Wayt. *My Lord, I would speak one word. There was a Great* Peer *of this Nation Indicted at* North hampton, *within these two years, for killing a man. The* Judges *there* ——

Court. You must Plead *guilty*, or *Not guilty*. Pray, who are you, that you should take this upon you more then all the rest? You must go the ordinary way; *guilty*, or *Not guilty*. Are you *guilty*? or *Not guilty?* We do not intend to prevent any thing you have to say: but it must be proper.

Clerk. Are you *guilty*? or *Not guilty*.

Th. Wait. *I cannot say, I am* Guilty.

Court. How then?

Th. Wait. *I am* Not guilty.

Clerk. How wilt thou be Tried?

Th. Wait. *By God, and the* Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *Hugh Peters*, Hold up thy Hand. How saiest thou? Art thou *guilty* of the Treason, whereof thou standest *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

Hugh Peters. *I would not for ten thousand Worlds say, I am* Guilty. *I am* Not guilty.

Clerk. How wilt thou be Tried?

Hugh Peters. *By the Word of God.* (*Here the People laughed.*)

Court. You must say, *By God, and the Countrey.* Tell him you, that stand by him, what he should say, if he doth not know.

Clerk. How wilt thou be Tried?

Hugh Peters. *By* God, *and the* Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *Dan. Axtel*, Hold up thy Hand. What saiest thou? Art thou *guilty* of the Treason, whereof thou standest *Indicted*, and for which thou art now Arraigned? or *Not guilty*?

Dan. Axtel. *May it please your Lordships, I desire to have the freedom of an* English-*man*; *that which is my Right by Law, and Inheritance. I have*

have ſomething to offer in point of Law.

Clerk. Art thou *Guilty*? or *Not guilty*?

Dan. Axtel. *My* Lords, *give me leave to ſpeak. For the Matter of the* Indictment *I conceive is upon the King's Death: that there is a* Commiſſion *of* Oyer, *and* Terminer, *for you to ſit. But, in regard it was in purſuance of an* Act *of* Parliament, *I conceive no* Inferiour Court *ought to judg of it. I deſire* Councel: *it being of great, and eminent Concernment in Law; That ever any* Judges, *or any* Inferiour Court, *ſhould judg of the Powers, and Privileges, of a* Parliament: *and I pray, that* Councel *may be aſſigned me.*

Clerk. Are you *Guilty*? or *Not guilty*?

Dan. Axtel. *If the* Court *over-rule me, and I ſhall not have my Liberty, as an* Engliſh-*man*———.

Court. The Courſe of *Law* is this; *No man can Juſtifie Treaſon.* If the matter, which you have to ſay, be Juſtifiable; it is not Treaſon: if Treaſon; it is not Juſtifiable. Therefore you muſt go to the ordinary courſe of the *Law.* You muſt Plead *Guilty*, or *Not guilty.*

Dan. Axtel. *I can produce many* Preſidents ——

Court. Are you *Guilty?* or *Not guilty?* The Language is put into your Mouth. You have no other Words to expreſs your ſelf by, at this time; but *Guilty*, or *Not guilty.*

Dan. Axtel. Judg Heath *had* Councel *aſſigned him upon the ſame* Caſe.

Court. That is very ſtrange: the *ſame Caſe.* What, was it for killing a King?

Dan. Axtel. *If the* Court *will over-rule me, I cannot help it.*

Mr. *Sollicitour Gen.* It may be this *Gentleman* may be deceived by a Miſtake. It may be he knows not the *Law*, which your Lordſhips may be pleaſed to acquaint him with: That, to ſtand *Mute* in High-Treaſon, is all one, as to *Confeſs* the Fact, and will have the ſame *Sentence*, and Condemnation, upon them, as if they had Confeſſed it.

Lord Chief Baron. *Then I'le tell you the Law*, He, that doth refuſe to put himſelf upon his Legal Trial of *God*, and the *Countrey*, is a *Mute* in Law: *and therefore you muſt Plead* Guilty, *or* Not guilty. *Let his Language be what it will, he is a* Mute *in Law.*

Dan. Axtel. *I do not refuſe it.*

Court. Then ſay.

Dan. Axtel. *I am* Not guilty.

Clerk. How wilt thou be Tried?

Dan.

Dan. Axtel. *By twelve lawfull men, according to the Constitutions of the Law.*

Court. That is by *God*, and the *Countrey.*

Dan. Axtel. *That is not lawfull, God is not locally here.*

Clerk. How wilt thou be Tried? You must say, *By God, and the Countrey.*

Dan. Axtel. *By* God, *and the* Countrey.

Clerk. God send you a good Deliverance.

Lord Chief Baron. Mr. Axtel, *have you your Papers again?*

Dan. Axtel. Yes, *my Lord.*

Lord Chief Baron. When your Indictment *is read the second time, when you come to your Trial, you may take what Notes you please.*

The Court *then Adjourned to the same Place, till the next morning, seven of the Clock.*

October 11th. 1660.

The *Court* being Assembled; the *Keeper* was commanded to set the *Prisoners* to the *Bar.*

Thomas Harrison, Adrian Scroop, John Carew, John Jones, Gregory Clement, Thomas Scot, were brought to the *Bar* accordingly. After which Silence was Commanded.

Court. You, that are *Prisoners* at the *Bar*, if you, or any of you desire *Pen, Ink,* and *Paper,* you shall have it: and, if you, or any of you, will Challenge any of the *Jury,* you may, when they come to be Sworn, and that before they are Sworn.

Sir Thomas Allen, *being called, was desired to look on the Prisoner, and lay his Hand on the Book; his* Oath *was then read to him:* viz. You shall well and truly try, and true deliverance make between our Sovereign Lord the King, and the Prisoners at the Bar, whom you shall have in charge according to your Evidence. So help you God.

Sir Joshua Ash *being next called, Mr.* Scroop *excepted against him.*

Sir Jeremy Whichcot, *Baronet, being next to be Sworn, Mr.* Harrison *excepted against him.*

James Halley *Esquire, being next to be Sworn, Mr.* Scot *excepted against him.*

Court. If you will not agree (*speaking to the Prisoners*) in your Challenges, we must be forced to Try you severally.

Henry Mildmay, *Esq; being called next, Mr.* Scroop *excepted against him.*

Court.

Court. We muſt needs Try them ſeverally; therefore ſet them all aſide, but *Harriſon.*

Court. Gentlemen, you, that are excepted, muſt not depart the *Court.*

Sir Joſhua Aſh, *being again called, was excepted againſt by* Mr. Harriſon.

Sir Jeremy Whichcot, *Baronet,*
James Hawley, *Eſq*;
Henry Mildmay, *Eſq*;
Chriſtopher Abdy, *Eſq*;
} *Being called again, were ſeverally excepted againſt by the Priſoner.*

Court. Mr. *Harriſon*, You know the Law. You muſt ſay, *I Challenge him.*

Mr. Harriſon. *I ſhall, Sir.*

Ralph Hartly being next called, and being very ſick, humbly prayed to be excuſed by the *Court*, which was granted.

Arthur Newman was called next.

Mr Harriſon. *May I not aſk of what Quality he is?*

Court. No, Sir. You are to Challenge him, or not to Challenge him.

Mr. Harriſon. *I Challenge him.*

Thomas Blith was next called, and alſo Challenged.

(*Here the People ſeemed to laugh.*)

Mr. Harriſon. *My Lord, I muſt make uſe of my Liberty in this Caſe.*

Court. God forbid.

Then *Grover*, *Robert Clark*, and *Richard Whalley*, were called, and by Mr. *Harriſon* Challenged.

Court. Mr. *Harriſon*, you know how many to Challenge. If you go beyond the *Number*, at your own peril be it.

Mr. Harriſon. *My Lord, pray tell me what it is.*

Court. You ſay very well. God forbid, but you ſhould know. You may Challenge five and thirty *Peremptorily.* If you go beyond, you know the Danger.

Mr. Harriſon. *My Lord, I do not do this to keep you off from the Buſineſs.*

William Vincent, and *Henry Twiford*, were then called, and Challenged.

John Liſle was next called.

Mr. Harriſon. *I do not know him.*

Mr. Liſle. Nor I you, Mr. *Harriſon. He was Sworn.*

Thomas Franklin, Sworn.

Thomas Winter, Challenged.

Richard Nichol, Sworn.

Moyce, *being ſick, prayed Excuſe: which was granted accordingly.*

Richard Cheyney, Challenged.

Allen Parſons, Challenged.
Henry Edlin called.
Mr. Harriſon. *I Challenge him.*
Mr. Harriſon. *Let him be Sworn.*
Court. No, No. (*Whereupon he was ſet aſide.*)
Mr. Harriſon. *If I have any Apprehenſion, or knowledg, of them, that's the thing, that leads me to it: as touching* this *man, he may be* Sworn.
Court. When he is *Challenged*, he cannot be recalled.
Mr. Harriſon. *I am content.*
Samuel Greenhill, Sworn.
Thomas Bide, Challenged.
John Page, Challenged.
Richard Rider, Challenged.
Mr. Harriſon. *Leſt I may run into an Hazard, in making uſe of that Liberty, which the Law gives me in this Caſe; and having not taken Notice of any Perſons Challenged; I mean, as to the Number: I deſire your* Officer, *that takes Notice, may acquaint me with the Number.*
Court. You ſhall know it; God forbid the contrary.
Edward Rolph was called next.
Mr. Harriſon. *Mr.* Rolph *is his Name? Let him be ſworn; ſworn.*
Francis Beal, Challenged.
John Kirk, Challenged.
Charls Pitfield, Challenged.
John Smith, Challenged.
Bell, Sworn.
Edward Franklin, Challenged.
William Whitcomb, Challenged.
Samuel Harris, Sworn.
John Collins, Challenged.
Thomas Snow, Sworn.
William Blunt, Challenged.
George Rigth, Challenged.
John Nichol of *Finchley*, Sworn.
Timothy Taylor, Challenged.
Thomas Fruin, Challenged.
Richard Abel, Challenged.
Thomas Morris, Sworn.
Ambroſe Scudamore, Challenged.

Ralph Halſel, Challenged.
George Tirry, Challenged.
Court. You have *Challenged* Thirty three already.
Mr. Harriſon. *I pray the* Names *may be read to me, to ſee, if it be ſo.*
Court. When you come to Thirty five, you ſhall have the *Names* read.
John Galliard, Challenged.
Thomas Swallow, Challenged.
Court. Now read their *Names* to him.
Which were read accordingly. In all thirty five Challenged.
George Pickering was next called, and *Sworn.*
Then they were called over, who were admitted: *viz.*
Sir *Thomas Allen*, *John Liſle*, *Thomas Francklin*, *Richard Nichol*, *Samuel Greenhil*, *Edward Rolph*, *Bell*, *Samuel Harris*, *Thomas Snow*, *John Nichol*, *Thomas Merris*, *George Pickering*: and Sworn.
Proclamation was then made.
If any man can inform my Lords, the King's Juſtices, *the King's* Serjeant, *or the King's* Attorney, *before this Inqueſt be taken; let them come forth, and they ſhall be heard: for now the* Priſoner *ſtands at the* Bar *upon his Deliverance. And all thoſe bound by* Recognizance *to appear, let them come forth, and give their* Evidence, *or elſe to forfeit their* Recognizance.
George Maſterſon, *James Nutley*, *Robert Coytmore*, *Holland Simſon*, and *William Jeſſop*, Witneſſes, were called.
Court. Gentlemen, that are not of the *Jury*, Pray, clear the Paſſage. The *Priſoner* is here for *Life*, and *Death*; let him have Liberty to ſee the *Jury.*
Clerk. Thomas Harriſon, *Hold up thy Hand.*
Clerk. *Look upon the* Priſoner, *you that are ſworn. You ſhall underſtand that the* Priſoner *at the Bar ſtands Indicted by the Name of* Thomas Harriſon, *late of* Weſtminſter *in the County of* Middleſex, *Gentleman; for that he, together with* John Liſle, *&c.* (Here the *Indictment* was read) *upon which* Indictment *he hath been Arraigned, and thereunto hath pleaded* Not Guilty, *and for his Trial hath put himſelf upon* God, *and the* Countrey: *which* Countrey *you are. Now your Charge is to enquire, whether he be* guilty *of the High Treaſon, in* Manner, *and* Form, *as he ſtands Indicted, or* Not guilty. *If you finde that he is* guilty, *you ſhall enquire, what Goods, and Chattels he had, at the time of committing the ſaid Treaſon, or at any time ſithence. If you finde, that he is* Not guilty;

you ſhall enquire, whether he did fly for it: if you finde, that he fled for it: you ſhall enquire of his Goods, and Chattels, as if you had found him Guilty: *if you finde, that he is* Not guilty, *nor that he did fly, you ſhall ſay ſo, and no more. And take heed to your* Evidence.

Mr. *Keeling* Enforced the *Charge* at large. After whom Sir *Henneage Finch*, His Majeſtie's *Sollicitour General*, in theſe words.

MAY it pleaſe Your Lordſhips. We bring before your Lordſhips, into Judgment this day, the *Murtherers of a King*. A man would think the Laws of *God*, and *Men*, had ſo fully ſecured theſe *Sacred* Perſons; that the *Sons of Violence* ſhould never approach to hurt them. For (*My Lord*) the very *Thoughts* of ſuch an Attempt hath ever been preſented by all *Laws*, in *all Ages*, and *all Nations* of the World, as a moſt unpardonable Treaſon. *My Lord*, This is that, that brought the two *Eunuchs* in the *Perſian*-Court to their juſt Deſtruction: *Voluerunt inſurgere*; ſaies the *Text*: and yet that was enough to *Attaint* them. And ſo (*My Lords*) it was by the *Romane* Laws too, as *Tacitus* obſerves; *Qui deliberant, deſciverunt*. To *Doubt*, or *Heſitate*, in a Point of *Allegiance*, is direct *Treaſon*, and *Apoſtaſie*. And upon this Ground it is, that the *Statute*, upon which your *Lordſhips* are now to proceed, hath theſe expreſs Words; *If a man doth Compaſs, or Imagine the Death of the King*, &c. Kings, who are *God's Vicegerents upon Earth*, have thus far a kind of Reſemblance of the *Divine* Majeſty; that their Subjects ſtand accountable to Them for the *very Thoughts* of their Hearts. Nor, that any Man can know the *Heart*, ſave God alone; but becauſe, when the *Wicked* Heart breaks out into any *open* Expreſſions, by which it may be judged, 'tis the *Thought* of the Heart, which makes the Treaſon: the *Overt-Act* is but the *Evidence* of it.

My Lords, This Care, and Caution, is not ſo to be underſtood; as if it were the *Single* Intereſt of *One* Royal Perſon onely. The Law doth wiſely judg, and foreſee, that upon the *Life* of the King depends the *Laws*, and *Liberties*, the *Eſtates*, and *Properties*, the *Wealth*, and *Peace*, the *Religion*, and, in Sum, the *Glory* of the Nation.

My Lords, This Judgment of the Law ha's been verified by a *ſad* Experience: for when that *Bleſſed King* (whoſe *Blood* we are now making *Inquiſition* for) was *untimely* taken away, *Religion*, and *Juſtice* both lay buried in the *ſame* Grave with Him: and there they had ſlept ſtill; if the *miraculous* Return of Our Gracious *Sovereign* had not given them a new *Reſurrection*.

My

My Lords, My Lord *Coke*, in his *Comment* upon this *Statute*, ha's one Conceit, which is somewhat *ſtrange*; I am ſure it is very *new*: he ſeems to think, that it would have added to the *Perfection* of this *Law*; if there had been a time limited for the *Party* to be accuſed. But certainly the work of this Day ha's quite confuted that *Imagination*. For here is a *Treaſon*, that ha's ſo long *out-faced* the *Law*, and the *Juſtice* of this Kingdom; that, if there had been any time of *Limitation* in the *Statute*, there would have been no *Time*, nor *Place*, left for *Puniſhment*. And, if this Treaſon had but once grown up to an *Impunity*, it might perhaps have drawn the *Guilt* of that *Innocent* Blood, and with it the *Vengeance* due to it, upon the whole Nation.

The *Scope* of this *Indictment* is, *for the Compaſſing the Death of the King*: the reſt of the *Indictment*, as the *Uſurping Authority over the King's Perſon*, the *Aſſembling*, *Sitting*, *Judging*, and *Killing* of the King, are but ſo many ſeveral *Overt-Acts* to prove the *Intention* of the Heart. We are not bound (under favour) to prove every one of theſe againſt *every* particular Perſon, who is *Indicted*: for he, that is in at *one*, is guilty in *Law* of *all* the reſt, as much, as if he had ſtruck the *Fatal Stroke* it ſelf. Nay (under favour) if we can prove any other *Overt-Act*, beſides what is lai'd in the *Indictment*, as the *encouraging* of the *Souldiers* to cry out, *Juſtice*, *Juſtice*; or *Preaching* to them to go on in *this Work*, as *Godly*, and *Religious*; or any other act of all that *Catalogue* of *Villanies*, for which the *Story* will be for ever *Infamous*: this may be given in *Evidence* to prove the *Compaſſing*, and *Imagining* the King's Death. The concluſion of this *Indictment* alledges the *Fact* done to be *to the great Diſpleaſure of Almighty God*, and *to the great Diſgrace of the People of* England. A *Truth* ſo clear, and known; that it can neither be *heightned* by any *Aggravation*, or *leſſened* by any *Excuſe*.

As for the *Fact* it ſelfe, with the *Manner* of it, I ſhall not need to open it at large: for theſe things were not done in a *Corner*; every *true Engliſh* Heart ſtill keeps within it ſelf a bleeding *Regiſter* of this *Story*: onely (*my Lords*) in the way to our *Evidence*, with your *Lordſhips* favour, this I think, may be fit to be ſaid.

Firſt, for the year 1648. (for that was the *Fatal* year of this King, and beyond that year we ſhall not now Enquire) I ſay whatſoever, in the *Year* 1648. cou'd have been done by a *Parliament* to ſave the *Life* of a King, was done in this *Caſe*.

They opened the way to a *Treaty* in ſpight of the *Army*; and, while theſe

these Sons of *Zeruiah*, who were too hard for them, were engaged in *Service*, in the *Remoter* Parts, they hastened the *Treaty* as much, as was possible: the *Debates* ripen, His Majestie's *Concessions* were Voted a *good ground for Peace*: notwithstanding the *Remonstrances* of the *Army* still flew about their *Ears*, and notwithstanding the *Oppositions* of a fearfull, and unbelieving Party of the *House of Commons*; whom the *Army* had frighted into an *Awfull*, and a *Slavish* Dependance upon them. And, when nothing else could be done *for* Him, they were so true to the *Obligations* they lay under, that they resolved to fall *with* Him: and did so. For the *Army*, who saw the *Treaty proceed* so fast made as great haste to *break* it. They seize upon the blessed *Person* of our Sacred King by *Force*, and bring Him to *London*; and here they force the *Parliament*; *shut out* some *Members*, *imprison* others: and then called this wretched little Company, which was left, a *Parliament*. By this, and before they had taken upon them the Boldness to dissolve the House of *Peers*, they pass a *Law*, and Erect, forsooth! an *High Court of Justice* as they call it, a *Shambles* of Justice; appoint *Judges*, *Advocates*, *Officers*, and *Ministers*; sit upon the *Life* of the King. Now they *Speak out*, and *Expound* their own *Declarations*, and tell us what that was, which before they had demanded in obscure Terms, when they called for *Justice* against *all Delinquents*. Now they speak plainly what they mean, and call this blessed King, this glorious *Saint*, the *grand Delinquent*:

——— *Hæc Acies victum factura Nocentem est.*

My Lords, When they had thus proceeded to appoint their *Judges*, *Officers*, and *Court*, then they call *this* Person, their onely *Liege* Lord, and Sovereign, to the *Bar*, and, by a *formal Pageantry* of Justice, proceed to *Sit* upon Him, *Arraign*, *Try*, *Sentence*, *Condemn*, and *Kill* (I had almost said *Crucifie*) Him, whom they could not but know to be their *King*. And all this against the *clearest* Light, the *sharpest* Checks, and most *thorough* Convictions of *Conscience*, that ever men resisted. And yet, in this *moment* of time, such was the *Majesty*, and *Innocence*, of our Gracious Sovereign; that the *People* followed Him with *Tears* in their *Eyes*, and *Acclamations* in their *Mouths*, *God save the King*; even then, when the *Souldiers* were ready to *fire* upon them, who did either *look* Sadly, or *speak* Affectionately. And yet it will appear upon our *Evidence* too; that so few of the very *Common Souldiers* could be brought to approve these *Proceedings*, or to cry out, *Justice*; that their *Officers* were fain by *Money*, or *Blows*, or both, to bring a great many to it.

My

My Lords, The *Actours* in this *Tragedy* were *many*, *very* many, *ſo many*; that ſure their Name is *Legion*, or rather many *Legions*. And certainly (*my Lords*) when we ſhall conſider the *Thing*, that they have done, we cannot but look upon it, as a *Villany*, which had in it all the *Ingredients* to make it deteſtable, that it was poſſible for a *Counſel* of *Men*, or *Divels* either, to put together. But yet, if any thing can be of a deeper Dy, then the *Guilt* of that *Sacred Blood*, wherewith they ſtand *Polluted*, me thinks, their *Impudence* ſhould make them more odious, then their *Treaſon*. It was the deſtruction of *God's Anoynted*, in the Name of the *Lord*. It was the Murther of a moſt bleſſed, and beloved *Prince*, in the Name of His *People*. Him, whom they had taken the tranſcendent Boldneſs to *impriſon*, as the Authour of the *War*, they put to *Death*, becauſe He would have been the Authour of our *Peace*: and that with ſo much *Scorn*, and *Indignity*, that ſome of them were not aſhamed to *ſpit* in the *Face* of our Lord, and Sovereign. And when they had thus *quenched the Light of* Iſrael: *Darkneſs*, and *Confuſion*, did over-ſpread the face of the *Land*: many poor *Subjects* at *Home*, and ſome *Proteſtants* in *Foreign* Nations, at the very *News* of it fell down *Dead*; as if this excellent King had been in a *Natural*, as well as a *Religious* ſence, *the Breath of our Noſtrils*, the *Anointed of the Lord*, who was *taken in their Pits*. The *Judges*, *Officers*, and other Immediate *Actours* in this pretended *Court*, were in number about fourſcore. Of theſe ſome four, or five, and twenty are dead, *and gone to their own place*. The *God of Reccompenſes* hath taken the matter ſo far into His Own Hands: and who knows, but that it might be one dreadfull part of His *Vengeance*, that they died in *Peace*? Some ſix, or ſeven of them, who are thought to have ſinned with leſs *Malice*, have their *Lives* ſpared, indeed, but are like to be brought to a ſevere *Repentance* by future *Penalties*. Some eighteen, or nineteen, have *fled* from Juſtice, and *wander* to and fro, about the World with the *Mark* of *Cain* upon them, a *Perpetual trembling*, leſt every *Eye* that ſees them, and every *Hand* that meets them, ſhould fall upon them. Twenty nine Perſons do now expect your *Juſtice*. Amongſt them the firſt, that is brought, is the *Priſoner* at the *Bar*, and he deſerves to be the firſt; for, if any Perſon, now left alive, ought to be ſtiled the *Conductour*, *Leader*, and *Captain* of all this Work, that's the *Man*. He (*my Lord*) brought the King up a *Priſoner* from *Windſore*, but *how*, and in *what manner*, with how *little Duty*, nay, with how *little Civility* to a common Perſon, you will

hear

hear in time. He *Sate* upon Him, *Sentenced* Him, he *Signed* the *Warrant*, firſt to *call that Court* together, then the *bloody Warrant* to cut off His Sacred Head. Againſt him, as againſt all the reſt, our *Evidence* will be of two *ſorts*: Witneſſes, *Viva voce*; that ſhall firſt prove to your *Lordſhips*, that every Perſon now in *Queſtion* did *ſit* in that *Court*, when their King *ſtood*, as a *Priſoner*, at the Bar. We ſhall prove that the *Precept*, by which this pretended *Court* was ſummoned, was not obeyed, and executed, till it had had the *hands*, and *ſeals*, of moſt of the pretended *Judges*: among the reſt, the *hand* of the Priſoner at the *Bar* will be found there. We ſhall prove his *hand* to the *bloody Warrant*, for ſevering the Sacred Head of our Bleſſed Sovereign from the Body, and then ſome *Circumſtances* of his Malice, and of his Demeanour. And after we have done with our Witneſſes *Viva voce*, if we have occaſion to uſe *Records* of *Parliament*, we ſhall ſhew them too; for we have the *Originals*, or authentick *Copies*. But now we ſhall proceed to our *Evidence*.

Proclamation was made for Silence.

Sir *Edward Turner*. My Lords, *The ſervice of this Day doth call to my Memory the* Story *of good King* Amaziah. *We read in* Holy Writ, *that his Father, King* Joaſh, *was murthered, and murthered by His own Subjects: but we read further, that, when* Amaziah *had regained the Crown, was ſettled in the Government, He ſlew thoſe, that ſlew His Father. He did go down into* Edom, *the* Valley of Salt, *and there He did ſlay ten thouſand. The work of this Day doth very much reſemble that Action. Our Good, and Gratious King, His Father of bleſſed Memory, and our Father, His natural, and our politick Father, to whom our natural Allegiance was due was* murthered, *and by His own Subjects. But,* My Lords, *this was not a* National *Crime: and our Good, and Gratious Sovereign hath done us that Honour, and Right to vindicate us in* Foreign *Nations; and now He is come* Home *in Power, and Glory, He does continue in the ſame Mind: that's the Reaſon, we are not now ſlain by thouſands; but that thoſe* Miſcreants *are gathered up here, and there, that did commit the Offence, and would have involved the Nation in a common Infamy.*

Gentlemen *of the* Jury, *Your time to enquire of this Matter is pretious, more pretious then my Words; elſe I would repeat to you the* Hiſtory *of that* Tragedy; *at leaſt that* Summary, *that was entred in the* Black Book, *or the* Journals *of that they then called a* Parliament. *It ſhall ſuffice to tell you, and that moſt truly; that it was but an handfull of men in reſpect*

respect of the whole Nation, *that did contrive, and design, this damnable, and traiterous Plot, to subvert the* Laws, *and change the* Government *of this well-governed* Nation. *In prosecution of which they did cast abroad, and spread forth,* Jesuitical Maxims, *Damnable, and Diabolical* Principles, *to intoxicate the People; and, when their Heads were troubled, they were easily lead into Arms; where, after some time, they grew drunk with Successes: and when they had drunk too much of the Loyal Blood of the People, then they thirsted for the Royal Blood also. I do confess, we read in* Stories, *that Kings have before this time been murthered: some in our Nation; as King* Richard *the Second, and* Edward *the Third: and in other Nations. But the Actours of those Murthers were modest to these. They did it in Private; these in the Face of the* Sun, *and the* People: *but it was those People,* Gentlemen, *they had corrupted with Shares in their Robberies, and Villanies. They pretended it was in a way of* Justice: *but, you must know, no* Justice *can be executed upon the Person of the King;* Touch not mine Anointed, *saith God himself.*

My Lords, *I do read in the* Roman *Story; that both amongst them, and other Nations, there was no* Law *against* Parricide. *It was not thought, that any man was so unnatural, and Devilish, to destroy his Father. But we do finde amongst the* Romanes *such a Fact was committed, and then they were at a loss to punish it. The way was this, that they found out: the* Offendour *they sewed into a Mail of Leather so close, that no Water could get in; when they had done, they threw him into the* Sea: *by this denoting; the* Offendour *was not worthy to Tread upon the* Ground, *nor to Breath in the* Air, *nor to have the benefit of any of the four* Elements, *nor the use of any of God's* Creatures: *and so he starved.*

Gentlemen, Parricide, *and* Regicide, *differ not in* Nature, *but in* Degree. Parricide *is the killing of the Father of* one, *or a* few, *Persons;* Regicide, *the Killing the Father of a* Countrey. *What Punishment then is suitable to this offence? Gentlemen, The* Prisoner *at the* Bar *is accused of this Offence, and now to be Tried by you: but, before we enter upon the Evidence, I must, with the leave of the* Court, *inform you; that, though the* Indictment *contains many* Circumstances, *and* Gradations, *in the Treason; yet the* Imagining, *and* Compassing *the Death of our late Sovereign, is the Treason, to which we shall apply our* Evidence: *this being, both by the* Common-Law, *and by the* Statute *of the* 25th *of* Edward the 3d. *the Principal Treason to be enquired of. And the other Circumstances in the* Indictment *are but so many matters to prove the* Overt-Act. *The* Consultations, *the Assuming Power to Try, and Condemn the King, the Assault upon him, and the Fatal Blow, that was*

given him, are but so many Demonstrations, and open Acts, proving the first Treasonable Design of the Heart.

It will be enough for you, and so my Lords will tell you; if we prove the Treason it self, which is the Compassing, *and* Imagining *the Death of the King: though we fail in some of the* Circumstances *laid in the* Indictment. *I do not speak this, as if we should fail in any: but it is not necessary to prove them all; if we prove any, you are to finde the Prisoner* Guilty. *I am not willing to hold your Lordships too long in the* Porch; *but desire to descend into the* Body *of the Business: and so we shall call our* Witnesses, *and doubt not, but to prove, that this Man at the* Bar *was the first, and not the least of these* Offendours.

Mr. *George Masterson* was called.

Mr. Harrison. *When I was before your Lordships yesterday, I offered something very material, in reference to the Jurisdiction of the* Court; *but you told me according to the* Rule, *I must Plead* Guilty, *or* Not guilty; *and what I had to offer should be heard in its proper place. I now desire to know, whether it be proper now to deliver my self, before you proceed to the calling of Witnesses: for I would go the best way, and would not willingly displease you.*

Lord *Chief Baron.* What was promised you yesterday, God forbid but you should have it. But I think it will be best for you to hear the *Evidence*, and then what you have to say, you shall be fully heard.

Mr. Harrison. *I am content.*

Whereupon *George Masterson, Stephen Kirk, Francis Hearn, William Clark, Robert Coitmore*, and *James Nutley*, were called, and sworn.

Councel. Mr. *Masterson*, Whether did the Prisoner at the Bar sit in that, which they called the *High Court of Justice*, to sentence the King, or no? Pray, tell my Lords, and the Jury therof, and what else you know of the matter.

Mr. *Masterson.* Upon the Oath I have taken (my Lords, and Gentlemen of the Jury) I saw the Prisoner, *Th. Harrison*, sit in that, which they called *The High Court of Justice*, upon the 27th. day of *January*, in the year 1648. to sentence the King.

Councel. Was it the day the Sentence was passed against the King?

Mr. *Masterson.* It was the day of the Sentence, the 27th. of *Jan.* 1648.

Councel. Can you say any thing else?

Mr. *Masterson.* I do (Sir) further remember, that, when the Clerk of the Court (as he was called) read the Sentence against the King, and said, It was the sentence of the whole Court; I saw the Prisoner at the Bar, together

gether with others, ſtand up, to my apprehenſion, as Aſſenting to it.

Councel. Was there not direction, that all ſhould ſtand up, as Aſſenting?

Mr. *Maſterſon.* I do not know that; but, when the Sentence was read, ſeveral of them did ſtand up, and he among the reſt, as Aſſenting to the Sentence; as the Spectatours underſtood.

Councel. Mr. *Clark*, What do you ſay to the ſame Queſtion?

Mr. *Clark.* My Lords, and Gentlemen of the Jury, I remember I ſaw the Priſoner at the Bar ſit ſeveral times in the *Court of Juſtice*, as they call'd it: particularly on the 23d. and 27th. of *January*, 1648. as I took notice of it in a Book.

Councel. Was that the day of the Sentence?

Mr. *Clark.* Yes, my Lord.

Coun. What ſay you to that of the riſing of thoſe perſons in the Court?

Mr. *Clark.* I remember they all roſe; but I did not take particular notice then of the Priſoner.

Councel. Mr. *Kirk*, You hear the Queſtion. Did you ſee the Priſoner at the Bar, in *Weſtminſter-Hall*, ſitting upon the Bench in that, which they called the *High Court of Juſtice*, when the King ſtood Priſoner at the Bar there?

Mr. *Kirk.* My Lord, I did ſee the Priſoner at the Bar ſit ſeveral days in that, which they called the *High Court of Juſtice*. I was there every day of their ſitting.

Councel. Do you remember he was there on the 27th of *Jan.* 1648?

Mr. *Kirk.* I do, Sir.

Councel. Tell the Jury what was the Work there.

Mr. *Kirk.* It was Sentence. I did take the Names of all thoſe Gentlemen, that did appear in the Court on that day, the 27th. of *Jan.* 1648. and amongſt the reſt, I took a Note of that Gentleman's Name, as being preſent.

Councel. Whereas theſe Gentlemen (Mr. *Maſterſon*, and Mr. *Clark*) have declared; that, as Aſſenting to the Sentence, they all ſtood up: Did you ſee them ſtand? and whether by Direction, or no?

Mr. *Kirk.* As for the Direction, I know nothing of it; but the Members then preſent in the Court (after Sentence was read) as far as my Eyes could perceive, ſtood up unanimouſly; I ſuppoſe, as Aſſenting to the Sentence.

Court. Mr. *Nutley*, Did you know the Priſoner at the Bar? Have you ſeen him ſit in *Weſtminſter-Hall* at any time upon the Bench, when the King was brought as a Priſoner to the Bar?

Mr. *Nutley*. My *Lords*, and Gentlemen of the *Jury*, I ſaw the *Priſoner* at the *Bar* ſeveral days ſit there, amongſt the reſt of the *Judges*, as a *Judg*, I ſuppoſe. To the beſt of my remembrance, he ſate there four days together.

Court. Was he there upon the day of the Sentence?

Mr. *Nutley*. I did take Notes, *my Lord*, that day in the *Court*, and I finde he did ſit that day.

Court. Do you know any thing more of the *Priſoner* at the *Bar*?

Mr. *Nutley*. Thus much I know concerning the *Priſoner* at the *Bar*, my *Lord*. The firſt day that they ſate in publick, was (as I remember) the 20th. of *Jan.* 1648. Some few days afore that, there was a Committee, that ſate in the *Exchequer-chamber*, and of that Committee the Priſoner at the Bar was one of the Members. I do remember well, it was in the Evening, they were lighting of Candles; they were ſomewhat private. This Gentleman was there, I ſaw him: for through the kindneſs of Mr. *Phelps*, who was then Clerk to that Committee, I was admitted, pretending firſt to ſpeak with the ſaid Mr. *Phelps*, and that I had ſome Buſineſs with him, and ſo (as I ſaid before) I was admitted into the Committee-Chamber. Being there, I did obſerve ſome Paſſages fall from the Priſoner at the Bar; the words were to this purpoſe. He was making a Narrative of ſome Diſcourſes, that paſſed between his late Majeſty and himſelf, in coming between *Windſor* and *London*, or *Hurſt-caſtle*, I know not well whether. *My Lord*, that Paſſage, that I obſerved to fall from him in that Diſcourſe, was this. He ſaid, that the King, as He ſate in the Coach with him, was importunate to know what they intended to do with Him.

Mr. Harriſon. *In the* Coach *was it?*

Mr. *Nutley*. Yea, Sir, it was in the *Coach*. He told the reſt of the company (as I ſaid before) that the King asked, *What do they intend to do with me? Whether to murther me, or no?* And I ſaid to Him, *There was no ſuch intention, as to kill Him, we have no ſuch thoughts. But* (ſaith He) *the Lord hath reſerved you for a publick Example of Juſtice.* There is one word more, *My Lords*; and that is this, which I heard from this *Priſoner* at the *Bar*; That the reaſon, and end, of their Meeting together, at that *Committee*, was *concerning the Charge*. So much I obſerved. It was concerning the Contracting of the *Impeachment*. I obſerved, that ſome found fault with the length of that, as it was drawn. They were offering ſome reaſons to Contract it, and I heard this Priſoner at the *Bar* vent this expreſſion, *Gentlemen, It will be good for us to* blacken *him, what we can; Pray, let us* blacken *him:* or words to that Purpoſe. I am ſure *Blacken* was his word.

Mr. *Wyndham*

Mr. *Wyndham.* Mr. *Nutley*, you ſpeak of an *Impeachment*. Againſt whom was that *Impeachment*?

Mr. *Nutley.* It was againſt His late Majeſty, the King.

Councel. And it was to draw up that *Impeachment* ſo, as to *Blacken* Him. Was it ſo?

Mr. *Nutley.* Yes, Sir.

Mr. Coytmore *ſworn.*

Mr. *Wyndham.* Did you ſee the *Priſoner* at the *Bar* ſitting in that, which they called the *High Court of Juſtice* on the Day, when the King was Sentenced, or at any other time? Pray tell my *Lords*, and the *Jury*.

Mr. *Coytmore.* My *Lords*, and Gentlemen of the *Jury*, I was in that, which they called the *High Court of Juſtice*, three, or four times. I ſaw this Gentleman, either once, or twice, ſitting there.

Councel. Do you know any thing more?

Coytmore. No, really. I came onely to hear, and ſee, what they were doing, and I did there ſee him, I think, ſeveral Days: I am ſure, once.

Councel. Did you ſee him on the ſeven and twentieth of *January* 1648. ſitting there, which was the Day of the *Sentence*?

Coytmore. I cannot call that to Memory.

Councel. Do you know of any *Expreſſions*, that the King ſhould be an *Example* of Judgment?

Coytmore. No, my *Lords*.

Mr. *Wyndham.* My *Lord*, in the next place, We ſhall ſhew that *Inſtrument*, that was made under the *Hand*, and *Seal*, of the *Priſoner* at the *Bar*, as well as others, for Execution of the King: that *Bloody Warrant*. But firſt we will ask *this* Witneſs another *Queſtion*.

Councel. Did you ſee the *Priſoner* at the *Bar* ſit on the *Bench*, as an ordinary *Spectatour*; or as one of the *Judges*?

Coytmore. He was in the *Court*, ſitting amongſt the reſt of the *Judges*, as one of them.

Mr. *Sollicitour.* My *Lords*, we will prove, that this *Priſoner* at the *Bar* was one of them, that took upon him the Conducting of the King, and that the King was in his Cuſtody; and to the *High Court of Juſtice* alſo.

The Lord Newburgh *ſworn.*

Councel. Pray, my *Lord*, give your ſelf the Trouble, to raiſe your Voice, and to tell my *Lords*, and the *Jury*, what you know of the *Priſoner* at the *Bar*; the part, that he acted in bringing up the King.

Lord

Lord Newburgh. *I was then living at his Majeſtie's Lodg at* Bagſhot, *when the Priſoner at the Bar brought the King from* Hurſt-Caſtle *to* London *He was the Perſon, that Commanded the whole Party: and when the King by the way went to Diner, by his Order there were* Centries *ſet at every Door where He was. When the King had Dined, he carryed Him to* Windſore, *and appointed ſeveral of his Officers to ride cloſe to the King, as He was riding, leſt He ſhould make His eſcape from them.*

Councel. That was an Impriſonment it ſelf, and ſo a Treaſon.

Mr. *Wyndham.* My Lords, we ſhall now produce to you two *Inſtruments*, which were made; the one for *Convening*, and *Summoning* the Aſſembling of that, which they called the *High Court of Juſtice*, and ſhew this Priſoner's *Hand*, and *Seal*, to that. And then ſhew you likewiſe that, which was the Conſummating of all, that *Bloody Warrant* for *Execution* of His late Majeſty of bleſſed Memory, with the *Hand*, and *Seal*, of the Priſoner at the Bar unto it, amongſt others.

Mr. *Sollicitour.* My *Lords*, it will be fit before this to give you an Account, how we came by theſe *Inſtruments*.

Mr. Jeſſop *ſworn.*

Councel. Shew to Mr. *Jeſſop* the *Warrant* for ſummoning that Court.

Mr. *Sollicitour.* Mr. *Jeſſop*, pray tell my *Lords*, and the *Jury*, how you came by that *Inſtrument* you have in your Hand.

Mr. *Jeſſop.* May it pleaſe your *Lordſhips*, I, having the Honour to attend the *Houſe of Commons*, the *Houſe* was pleaſed to make an *Order*, that Mr. *Scobel* ſhould deliver into my hands all ſuch *Books*, and *Records*, *Papers*, and other things, as did belong to the *Houſe of Commons*: and, in purſuance of that *Order*, I did receive, amongſt other things, this *Inſtrument*, as a thing that had been formerly in his hands, as *Clerk* of the *Houſe of Commons*.

Mr. *Sollicitour.* We deſire it may be read, my *Lords*.

Court. Pray firſt, prove his Hand.

Mr. Harriſon. *I deſire to know what is offered to be Read.*

Court. It is a *Warrant* that you Sealed, amongſt other pretended Judges of your *High Court of Juſtice* (as you called it) for Trial of the King, for Summoning that Court.

Councel. Mr. *Kirk*, Have you ſeen the Hand-writing of the *Priſoner* at any time?

Mr. *Kirk.* I have very often ſeen it, and am well acquainted with it; and, ſo far as it's poſſible a man can Teſtifie touching the Hand of another

other Perſon, I do verily believe this to be his *Hand.*

Councel. How came you to be acquainted with his *Hand?*

Mr. *Kirk.* As he was a *Member* of the *Houſe of Commons*, and my Imployment having relation thereto, I have ſeen him ſet his *Hand* ſeveral times.

Mr. Farrington *Sworn.*

Councel. Do you believe that this is the *Hand-writing* of the *Priſoner* at the Bar: (*The* Inſtrument *being ſhewed him.*)

Mr. *Farrington.* I did not ſee him write it, my *Lords*; but I believe it to be his: for I have often ſeen his *Hand writing.* It is his *hand*, ſo far as poſſibly a man can know any Perſon's *hand*, that did not ſee him write.

Mr. Harriſon. *I deſire to ſee the Inſtrument.* Which being ſhew'd to him; he ſaid, *I believe it is my own Hand.*

Councel. That's the Warrant for ſummoning that *Court*, that he owns his *hand* to.

Court. Shew him the other *Inſtrument.*

That being for Execution *of the* Sentence; *it being ſhew'd him,*

Mr. Harriſon. *I do think this is my* hand *too.*

Councel. If you think it, the *Jury* will not doubt it. That's the *Bloody Warrant* for Execution. And we deſire they may be both read.

Mr. Harriſon. *My* Lords, *do theſe Learned Gentlemen offer theſe, as being any* Records.

Councel. No: but as your own *hand-writing.*

Mr. Harriſon. *If you do not read it as a* Record, *I hope your* Lordſhips *will not admit of any thing of that kinde againſt me.*

Councel. He knows, that a *Letter* under his *hand*, and *Seal*, may be read in a *Court.* We do not offer it as a *Record*; but prove it by Witneſſes, that it is your *hand-writing.*

Court. You have Confeſſed theſe to be your *hands.* Whether they are *Records*, or no; whether *Papers*, or *Letters*: they may be read againſt you. You ſigned the *Warrant* for Convening together thoſe, which you called *The High Court of Juſtice*, and you ſigned the other *Warrant* for putting the King to Death. You do Confeſs theſe two things. We do not ſee what further Uſe may be made of them.

Court. You might obſerve, how the *Indictment* was for *Imagining*, *Compaſſing*, and *Contriving* the King's Death. To prove that, there muſt be ſome *Overt-Act*, and a *Letter* under the Partie's Hand is a ſufficient

ficient *Overt-Act* to prove such *Imagination*: to that end these are used.

Mr. Harrison. *I do not come to be denying any thing, that in my own Judgment, and Conscience, I have done, or Committed; but rather to be bringing it forth to the Light.*

Court. Sir, you must understand this by the way, this you must take along with you. That these are read, not as any thing of Authority in themselves, or as used to any other purpose, but as an Evidence of the *Fact* against you. Take that along with you.

(*The two Bloody* Warrants *for* Trial, *and for* Execution *of His Majesty were here read; the later of which is as followeth.*)

At the High Court of Justice *for the Trying, and Judging of* Charls Stuart, *King of* England, *Jan.* 29. 1648.

WHereas *Charls Stuart*, King of *England*, is, and standeth, Convicted, Attainted, and Condemned of High Treason, and other High Crimes; and *Sentence* upon *Saturday* last was pronounced against him by this Court; to be put to Death, by the severing his Head from his Body; of which *Sentence* Execution yet remaineth to be done: These are therefore to will, and require you, to see the said *Sentence* executed in the open Street before *White-hall*, upon the morrow, being the 30th. day of this instant Moneth of *January*, between the hours of ten in the Morning, and five in the Afternoon of the same day, with full effect. And for so doing this shall be your sufficient *Warrant*. And these are to require all Officers, and Souldiers, and other the good People of this Nation of *England* to be assistant unto you in this service. Given under our Hands, and Seals.

To Colonel *Francis Lacker* Colonel *Hunks*, and Lieutenant-Colonel *Phayre*, and every of them.

Sealed, and *subscribed*,

BY
John Bradshaw, Lord President.

Jo. Hewson.
Per. Pelham.

Thomas

Thomas Grey.
Oliver Cromwel.
Edward Whalley.
John Okey.
Jo. Danvers.
Mich. Livesey.
Jo. Bourchier.
Hen. Ireton.
Thomas Maleverer.
Jo. Blakestone.
Jo. Hutchinson.
Will Goff.
Thomas Pride.
Hen. Smith.
Peter Temple.
Tho. Harrison.
Isaac Ewer.
Val. Wauton.
Simon Meyn.
Tho. Horton.
Jo. Jones.
Jo. Moor.
Hardress Waller.
Gilbert Millington.
Geo. Fleetwood.
Jo. Alured.
Rob. Lilburn.
Will. Say.

Rich. Dean.
Reb. Tichbourn.
Hum. Edwards.
Dan. Blagrave.
Owen Roe.
Will. Purefoy.
Adrian Scroop.
James Temple.
Aug. Garland.
Edmond Ludlow.
Hen. Marten.
Vincent Potter.
Will. Constable.
Rich. Ingoldsby.
Will. Cawley.
Joh. Barkstead.
Anth. Stapeley.
Greg. Norton.
Tho. Challoner.
Tho. Wogan.
Jo. Ven.
Greg. Clement.
Jo. Downs.
Tho. Wayt.
Tho. Scot.
Jo. Carew.
Miles Corbet.

Mr. *Wyndham.* Gentlemen *of the* Jury; *We have done our* Evidence, *and you must know,* Gentlemen, *that the principal Point of the* Indictment *is for* Compassing, Imagining, *and* Contriving *the Death of His late Majesty of Glorious Memory. There lies the Treason. So saies the* Statute *of the* 25th. *Edw.* 3d. *It hath nothing of* Killing *the King there, but of* Imagining, *and* Compassing *the Death of the King. The going about it, that's the Treason: as hath been learnedly opened to you. The*

reſt are but Overt-Acts. *If there be ſuch an* Imagination, *or* Compaſſing *the Death of the King once declared, though no fruit at all follow, it is* Treaſon. *Here certainly you have a very full* Evidence *given. We ſhew you a* Conſultation; *this is one* Overt-Act, *which would do the work, if there were nothing elſe. I muſt tell you (and that with ſubmiſſion to my Lords, the* Juſtices,) *if they had* adviſed, *and gone no further: that had been Treaſon in the* Letter *of the Law. They Convened, and met together, and ſuppoſe then, they had abſolved, and acquitted him; do you think they had abſolved themſelves from Treaſon? With reverence be it ſpoken: if they had* acquitted *him, they had been guilty of Treaſon.* Aſſuming a Power *to put the King to Death, is an* Overt-Act, *declaring ſuch an Imagination. You ſee this Priſoner was no ordinary Actour in it: his Hand is in at all Games, Taking of Him, Impriſoning of Him, bringing Him to* London, *and ſetting Guards on Him. You ſee alſo his Malice,* Let us *Blacken* Him: *for they knew His* Innocency *would Shine forth; unleſs it was* blackened *by their Imputations. He Sate many times, as you hear, and* Sentenced *Him, and Aſſented to that* Sentence *by ſtanding up, and likewiſe by Concluding the* Cataſtrophe *of that ſad beginning of our Sufferings, his making a* Warrant *for His* Execution, *and accordingly you know what did follow: I think a clearer* Evidence *of a* Fact *can never be given, then is for theſe things.*

(Here the Spectatours *Hummed.*)

Lord *Chief Baron.* Gentlemen, This *Humming* is not at all becoming the Gravity of this *Court.* Let there be free-ſpeaking by the *Priſoner*, and *Councel.* It is more fitting for a *Stage-Play*, then for a *Court of Juſtice.*

Mr. Harriſon. *It is now time*, my Lords, *to offer what I have to ſay. Have theſe Learned Gentlemen offered what they will ſay?*

Councel. We have no more, till he hath given us occaſion: not for *Evidence* of the *Fact.*

Mr. Harriſon. *My* Lords, *the matter, that hath been offered to you, as it was touched, was not a thing done in a Corner. I believe the ſound of it hath been in moſt Nations. I believe the Hearts of ſome have felt the Terrours of that Preſence of God, that was with his Servants in theſe days: (However it ſeemeth good to him, to ſuffer this* Turn *to come on us) and are Witneſſes, that the things were not done in a Corner. I have deſired*

all

as in the sight of him, that searcheth all hearts, whilest this hath been done, to wait, and receive from him Convictions upon my own Conscience, though I have sought it with Tears many a time, and Prayers, over and over, to that God, to whom you, and all Nations, are less, then a Drop of Water of the Bucket: and, to this moment, I have received rather Assurance of it, and that the things, that have been done, as astonishing on one hand. I do believe, e're it be long, it will be made known from Heaven; There was more from God, then men are aware of. I do profess, that I would not offer, of my self, the least Injury to the poorest Man, or Woman, that goes upon the Earth. That I have humbly to offer is this to your Lordships; You know what a Contest hath been in these Nations for many years. Divers of those, that sit upon the Bench, *were formerly as Active* ——

Court. Pray, Mr. *Harrison*, do not thus Reflect on the *Court.* This is not to the Business.

Mr. Harrison. *I followed not my own Judgment. I did What I did, as out of Conscience to the Lord. For when I found those, that were as the Apple of mine Eye, to turn aside, I did loath them, and suffered Imprisonment many years. Rather, then to turn, as many did, that did put their Hands to this Plough: I chose rather to be separated from Wife, and Family, then to have Compliance with them: though it was said,* Sit at my Right Hand, *and such kind of Expressions. Thus I have given a little poor Testimony, that I have not been doing things in a* Corner, *or from my self. May be, I might be a little mistaken: but I did it all according to the best of my understanding; desiring to make the Revealed Will of God in his* Holy Scriptures, *as a guid to me. I humbly conceive, that, what was done, was done in the name of the* Parliament *of* England, *that what was done, was done by their Power, and Authority, and I do humbly conceive, it is my Duty to offer unto you in the beginning, that this* Court, *or any* Court *below the* High Court of Parliament *hath no Jurisdiction of their Actions. Here are many learned in the Law, and, to shorten the Work, I desire I may have the help of* Councel *Learned in the Laws, that may in this matter give me a little assistance to offer those Grounds, that the Law of the Land doth offer. I say what was done was done by the Authority of the* Parliament, *which was then the* Supreme *Authority, and that those, that have Acted under them are not to be questioned by any Power*

leſs then them. And, for that I conceive there is much out of the Laws to be ſhewed to you, and many Preſidens *alſo in the* Caſe. *Much is to be offered to you in that, according to the Laws of the Nations, that was a due* Parliament. *Thoſe* Commiſſions *were iſſued forth, and what was done, was done by their Power. And whereas it hath been ſaid, we did Aſſume, and Uſurp an Authority, I ſay, this was done rather in the Fear of the Lord.*

Court. Away with him. Know where you are, Sir. You are in the Aſſembly of *Chriſtians*. Will you make God the Authour of your Treaſons, and Murthers? Take heed, where you are. *Chriſtians* muſt not hear this. We will allow you, to ſay for your own *Defence* what you can. And we have, with a great deal of Patience, ſuffered you to ſally out: wherein you have not gone about ſo much for Extenuation of your Crimes, as to Juſtifie them, to fall upon others, and to Blaſpheme God, and commit a new Treaſon. For your having of *Councel*; This is the reaſon for allowing of *Councel*; when a man would Plead any thing, becauſe he would Plead it in *Formality*, *Councel* is allowed. But you muſt firſt ſay in what the Matter ſhall be, and then you ſhall have the *Court's* Anſwer.

Lord *Finch.* Though my *Lords* here have been pleaſed to give you a great Latitude; this muſt not be ſuffered; that you ſhould run into theſe damnable Excurſions; to make God the Authour of this damnable Treaſon Committed.

Mr. Harriſon. *I have two things to offer to you, to ſay for my Defence in Matter of* Law. *One is; that this, that hath been done, was done by a* Parliament *of* England, *by the* Commons *of* England *aſſembled in* Parliament: *and that being ſo, whatever was done by their Commands, or their Authority, is not queſtionable by your* Lordſhips; *as being (as I humbly Conceive) a Power Inferiour to that of an* High Court *of* Parliament. *That's one. A ſecond is this; That what therefore any did in obedience to that Power, and Authority, they are not to be queſtioned for it, otherwiſe we are in a moſt miſerable Condition, bound to obey them, that are in Authority, and yet to be puniſhed, if obeyed. We are not to Judg, what is lawfull, or what is unlawfull.* My Lords, *Upon theſe two Points I do deſire, that thoſe, that are Learned in the Laws, may ſpeak to, on my be-*

half.

half. It concerns all my Countreymen. There are Cases alike to this, you know, in King Richard *the Second's Time, wherein some Question had been of what had been done by a* Parliament; *and what followed upon it, I need not urge it. I hope it will seem good to you; that* Councel *may be assigned: for it concerns all my Countreymen.*

Court. You are mistaken, if you appeal to you Countreymen. They will cry you Out, and shame you.

Mr. Harrison. *May be so,* my Lords, *some will: but I am sure others will not.*

Mr. *Sollicitour Gen.* These two Points, *my Lords*, are but one, and they are a New Treason at the Bar: for which he deserves to dy; if there were no other *Indictment*. It is the Malice of his heart to the Dignity, and Crown of *England*. I say this is not matter, for which *Councel* can be assigned. *Councel* cannot put into Form that, which is not Matter Pleadable it self. It is so far from being true, that this was the Act of the Supreme *Parliament* of the People of *England*, that there was nothing received with more Heart-bleeding, then this Bloody Business. But that the World may not be abused by the Insinuations of a man, who acts, as if he had a Spirit, and in truth is possessed, I will say; That the *Lords*, and *Commons*, are not a *Parliament*: that the *King*, and *Lords*, cannot do any thing without the *Commons*; Nor the *King*, and *Commons*, without the *Lords*; Nor the *Lords*, and *Commons*, without the *King*, especially *against* the King. If they do, they must answer it with their Head: for the King is not accountable to any Coercive Power. And for the Prisoner to Justifie his Act, as if it were the Act of the *Commons* of *England*, he is very much to be reproved. Shall he pretend, that one House, nay the eight part of a *House* (for so it was) can Condemn a King: when both *Houses* cannot condemn one man in spight of the King? I desire, *my Lords*, it may pass with a due Reproach, and a Sentence upon it.

Lord *Chief Baron.* It is true your Questions are but one Point. You pretend the *Parliament*'s Authority; and, when you come to speak of it, you say the *Commons* of *England*. They were but one *House* of *Parliament*. The *Parliament*? what is that? It is the *King*, the *Lords*, and the *Commons*. I would fain know of you, where ever you read, by the light you

ſay you have in your Conſcience, that the *Commons* of *England* were a *Parliament* of *England*, that the *Commons* in *Parliament* uſed a Legiſlative power alone. Do you call that a *Parliament*, that ſate, when the Houſe was *Purged*, as they call it, and was ſo much under the Aw of the *Army*, who were then, but fourty, or fourty five at moſt? Then you ſay, It was done by Authority of them. You muſt know, where there is ſuch an Authority (which indeed is no Authority) he that confirms ſuch an Authority, he Commits a double offence; therefore conſider what your *Plea* is. If your *Plea* were doubtfull, we ſhould, and ought, and would, our ſelves, be of *Counſel* for you. That, which you ſpeak concerning *Conviction of your own Conſcience*, remember, that it is ſaid in *Scripture*, that *they ſhall think they did God good ſervice, when they ſlay you*, as it is in St. *John*. He hath a great deal of Charity, that thinks that what you did was out of a Conſcientious *Principle*. It was againſt the Light of noon-day, and common practice. You make your ſelf a *Sollicitour* in the Buſineſs. *Let us* blacken *him, as much as we can*. I have not touched at all upon the *Evidence*. I will not urge it now. I ſay you juſtifie it upon *Convictions of Conſcience*, and pretend it upon Authority. A thing never known, or ſeen, under the Sun; that the *Commons*, nay a few *Commons* alone, ſhould take upon them, and call themſelves the *Parliament* of *England*. We have been cheated enough by Names, and Words: there is no colour for what you ſay. I do think, and hope, my Brethren will ſpeak to this *Caſe*, that none of us do own that Convention, whatſoever it be, to be the *Parliament* of *England*. There was another aggravation: at this Time, that this Pretended Authority uſurped that Power, the *Lords* were then ſitting. You had not taken this uſurped Power to diſſolve theſe *Lords*. No; you did this Act in deſpight of the *Lords*, you had ſent up an *Ordinance* to the *Lords*, and they rejected it, and thereupon theſe *Members* took it upon themſelves. Amongſt thoſe there were ſome *Negatives*, and thoſe *Members* were under the Aw, and Power, of your *Forces* at that time. What you Plead, the *Court* are of Opinion, tends to the ſubverſion of the Laws; for you to uſurp Power over the People without their Conſents, to call this the *People*; We never knew the like before. But the *Parliament* of *England* was the *King*, *Lords*, and *Commons*. For you to ſpeak of this Power, and Juſtifie this Power, is an Aggravation adding one Sin, and Treaſon, to another. We ſhall tell you, that neither *both Houſes* of *Parliament*, if they had been there; not any *ſingle Perſon*, *Community*, not the *People*, either

either *Collectively*, or *Representatively*, had any colour to have any Coercive Power over their King. And this *Plea*, which you have ſpoken of, it ought to be over-ruled, and not to ſtand good.

Mr. Annesley. *I do the more willingly ſpeak to this Buſineſs; becauſe I was one of thoſe, that ſhould have made up that* Parliament, *that this Priſoner pretends to. I was one of that* Corrupt Majority (*as they called it*) *that were put out of the* Houſe. *He cannot forget, that at that time there were* Guards *upon both* Houſes of Parliament *to attend them, that were of their own appointment: and that thoſe* Guards *were forcibly removed by the Priſoner at the Bar, and his Fellows: and other* Guards *put there, who, inſtead of being a Defence unto them, while thoſe* Commons *ſtood at the Door, were by them threatned. Let the* Lords, *and* Commons *of* England *in* Parliament *aſſembled, a full Houſe of* Commons, *did reſolve, notwithſtanding what was aforeſaid; that the Treaty in the Iſle of* Wight *was a* Ground for Peace. *Afterwards the Major part of the* Houſe *of* Commons, *having reſolved on this, ſent it up to the* Lords: *that very day when they were Adjourned, there were* Forces *drawn down to the* Houſe *of* Commons Door, *& none ſuffered to come into the* Houſe, *but thoſe, that they pleaſed. All thoſe, that had a mind for Peace, that minded their Duty, and Truſt, and Allegiance to their King, were ſeized on by this Gentleman, and his Fellows. When this was done, what did he, and thoſe Fellows do? They ſate, and put a check upon all, that ſhould come in. None muſt come in, but thoſe, that would renounce their Allegiance, and Duty to their King, and the People, for whom they ſerved, and then declared againſt that Vote, which had been paſſed upon* Debate *of twelve, or fourteen hours, and then to call this an* Houſe *of* Commons, *nay the* Supreme Authority of the Nation, *he knows is againſt the Laws of the Land. For the* Houſe *of* Commons *alone cannot ſo much, as give an* Oath. *It hath not power of Judicature of Life, and Death: this he knows well to be according to the Laws of* England. *He knows, that no Authority, leſs then an* Act of Parliament, *can make a Law, and he knows an* Act of Parliament *muſt be paſſed by the* King, Lords, *and* Commons. *I wonder much to hear a Juſtification in this kind by one, that knows the Laws of* England *ſo well. There will none of the* Court *allow, that that was a* Parliament. *The Majority of that* Houſe *did all diſavow it. Theſe things have been already diſcourſed of: I ſhall only ſay,*

hat he, knowing the Laws so well, I hope, he shall suffer for transgression thereof.

Mr. Hollis. You do very well know, that this, that you did, this horrid, detestable Act, which you Committed, could never be perfected by you, till you had broken the *Parliament*. That *House* of *Commons*, which you say gave you Authority, you know, what your self made of it, when you pulled out the *Speaker*. Therefore do not make the *Parliament* to be the Authour of your black Crimes. It was innocent of it. You know your self, what Esteem you had of it, when you broke, and tore it in sunder, when you scattered, and made them hide themselves, to preserve them from your Fury, and Violence. Do not make the *Parliament* to be the Authour of your Crimes. The *Parliament* are the three *Estates*. It must not be admitted, that one *House*, part of the *Parliament*, should be called the *Supreme Authority*. You know what that *Rump*, that you left, did, what Laws they made. Did you go home to advise with your Countrey, that you Represented? How durst you abuse the Trust committed to you by your Countrey, that chose you for that Place? You know, that no *Act* of *Parliament* is binding; but what is Acted by *King*, *Lords*, and *Commons*. And now, as you would make *God* the Authour of your *Offence*, so likewise you would make the *People* guilty of your *Opinion*. But your *Plea* is over-ruled.

To which the Court *assented.*

Mr. Harrison. *I was mistaken a little. Whereas it was said, the Points were one: I do humbly conceive, they were not so. I say what was done, was done in Obedience to the Authority. If it were but an* Order *of the* House *of* Commons, *this under a Force, yet this* Court *is not Judg of that Force. I say, if it was done by one* Estate *of* Parliament, *it is not to be questioned.*

Court. It was not done by one *Estate*. They were but a Part, nay but an eighth Part.

Denz. Hollis. It was not an *House* of *Commons*. They kept up a Company by the power of the Sword. Do not abuse the People in saying, It was done by the *Supreme Power*.

Counsel.

Counsel. My Lord, if it were an *House* of *Commons*, neither *House* of *Commons*, nor *House* of *Lords*, nor *House* of *Lords* and *Commons* together: no Authority upon Earth can give Authority for Murthering the King. This that he alledgeth, is Treason: my Lord, this, that is said, is a clear *Evidence* of that, which is charged: there is onely this more in it, he hath done it, and, if he were to do it again, he would do it.

Lord *Chief Baron.* It is clear as the Noon-day, that this was not the *House* of *Commons*. Suppose it had been an *House* of *Commons*, and full, and suppose (which far be it from me to suppose) they should have agreed upon such a Murtherous *Act*, for the *House* of *Commons* to do such an *Act*, it was void in it self; nay, any Authority, without the *House* of *Lords*, and *King*, is void. You plead to the *Jurisdiction* of the Court, whether we should Judg it, or no. Yes, I tell you, and proper too. We shall not speak what Power we have. The *Judges* have Power, after *Laws* are made, to go upon the *Interpretation* of them. We are not to judg of those things, that the *Parliament* do. But when the *Parliament* is *purged* (as you call it) for the *Commons* alone to Act, for you to say, that this is the *Authority of Parliament*, it is that, which every man will say, *Intrenches highly upon his Liberty, and Privilege*: And what you have said to your Justification, what doth it tend to, but as much as this, *I did it, justifie it, and would do it again*: which is a new Treason. The greatest Right, that ever the *House* of *Commons* did claim, is but over the *Commons*. Do they claim a particular Right over the *Lords*? Nay, over the *King*? Make it out, if you can: but it cannot possible be made out. What you have said doth aggravate your Crimes. It is such an approvement of your Treason, that all *Evidences* come short of it. *King*, *Lords*, and *Commons* is the Ground of the *English-Law*. Without that no *Act of Parliament* binds.

Justice Mallet. I have been a *Parliament-Man* as long, as any man here present, and I did never know, or hear, that the *House* of *Commons* had *Jurisdiction* over any, saying their own *Members*: which is as much, as I will say concerning the *Parliament*. I have heard a *Story* of a *Mute*, that was born *Mute*, whose Father was slain by a Stranger, a man unknown. After twenty years, or thereabouts, this *Mute*-man fortuned to see the Murtherer of his Father: and these were his

Words,

Words; *Oh! here is he, that slew my Father.* Sir, The *King is the Father of the Country*, *Pater Patriæ*: so saith Sir *Edward Coke*. He is *Caput Reipublicæ*, the *Head of the whole Common-Wealth*. Sir, What have you done? Here you have cut off the *Head* of the whole *Common-Wealth*, and taken away Him, that was our *Father*, the Governour of the whole Countrey. This you shall finde *Printed*, and *Published*, in a Book of the greatest *Lawyer*, Sir *Edward Coke*. I shall not need, *my Lord*, to say more of this Business, I do hold the Prisoner's *Plea* vain, and unreasonable, and to be rejected.

Justice Hide. I shall not trouble you with many Words. I am sorry, that any man should have the Face, and Boldness, to deliver such Words, as you have. You, and all, must know, that the *King* is above the two *Houses*. They must propose their Laws to him. The *Laws* are made by *Him*, and not by *them*: by their consenting; but they are His Laws. That which you speak as to the *Jurisdiction*: you are here *Indicted* for High Treason, for you to come to talk of *Justification* of this by Pretence of Authority, your *Plea* is naught, illegal, and wicked, and ought not to be allowed. As to having of *Councel*, the *Court* understand what you are upon: *Councel* is not to be allowed in that *Case*, and therefore your *Plea* must be over-ruled.

Mr. Justice *Twisden.* I shall agree with that, which many have already said; onely this, you have eased the *Jury*; you have confessed the *Fact*. I am of the same Opinion, that you can have no *Councel*: therefore I over-rule your *Plea*, if it had been put in never so good *Form*, and *Manner*.

Earl of *Manchester.* I beseech you, *my Lords*, let us go some other way to work——

Sir *William Wild.* That which is before us is, whether it be a matter of *Law*, or *Fact*. For the matter of *Law*; your Lordships have declared what it is, his Justification is as high a Treason, as the former. For matter of *Fact*, he hath confessed it. I beseech you, *My Lord*, direct the *Jury* for their *Verdict*. This Gentleman hath forgot their Barbarousness: they would not hear their King.

Court.

Court. No *Counsel* can be allowed to justifie a Treason: that this is a Treason, you are *Indicted* by an *Act* of the 25th. of *Edw.* 3d. That, which you speak of the *House* of *Commons*, is but part of the *House* of *Commons*, they never did, nor had any power, to make a *Law* but by *King*, *Lords*, and *Commons*: and therefore your *Plea* is naught, and all the *Court* here is of the same opinion; if they were not, they would say so: therefore what you have said is over-ruled by the *Court*. Have you any thing else to offer?

Mr. Harrison. *Notwithstanding the Judgment of so many Learned men, that the King* of England *are no ways accountable to the* Parliament. *The* Lords, *and* Commons, *in the beginning of this War having declared the King's beginning War upon them*; *the* God of Gods——

Court. Do you render your self so desperate, that you care not what Language you let fall? It must not be suffered.

Mr. Harrison. *I would not willingly speak to offend any man: but I know God is* no Respecter of Persons. *His setting up his* Standard *against the People*——

Court. Truly, *Mr. Harrison*, this must not be suffered: this doth not at all belong to you.

Mr. Harrison. *Under Favour, this doth belong to me. I would have abhorred to have brought him to* Account: *had not the blood of* English *men, that had been shed*——

Counsel. Me thinks he should be sent to *Bedlam*, till he comes to the *Gallows* to render an *Account* of this. This must not be suffered. It is in a manner a new *Impeachment* of *this* King; to justifie their Treasons against His late Majesty.

Mr. *Solicitour General.* My *Lords*, I pray, that the *Jury* may go together upon the *Evidence*.

Sir *Edw. Turner.* My *Lords*, This man hath the *Plague* all over him; it

it is Pity any [illegible] should come near him, for he will infect them. Let us say to him, as [illegible] to write over an House Infected, *The Lord have Mercy upon him*, and, so let the *Officer* take him away.

Lord *Chief Baron*, *Mr. Harrison*, We are ready to hear you again: but to hear such Stuff, it cannot be suffered. You have spoken that, which is as high a Degree of Blasphemy, next to that against God, as I have heard. You have made very ill use of these Favours, that have been allowed you to speak: your own Conscience cannot but tell you the Contradiction of your Actions against this, that you have heard in the Opinion of the *Court*. To extenuate your Crimes you may go on; but you must not go on as before.

Mr. Harrison. *I must not speak so, as to be pleasing to men: but, if I must not have liberty, as an* English *man* [illegible]

Court. Pray, do not reflect thus. You have had Liberty, and more, then any *Prisoner* in your Condition can expect: and I wish you had made a good use of it. Keep to the Business, say what you will.

Mr. Harrison. *My Lords, I say. There was a Discourse by one of the Witnesses, that I was at the* Committee *; preparing the* Charge, *and that I should say,* Let us *blacken* Him. *The thing is utterly untrue, I abhorred the doing of any thing touching the* Blackning *of the King. There was a little Discourse between the King, and my self. The King had told me that He had heard, that I should come privately to the Isle of* Wight, *to offer some injury to Him. But I told Him I abhorred the thoughts of it. And whereas it is said that my Carriage was hard to Him, when I brought Him to* London: *it was not I, that brought Him to* London: *I was commanded, by the* General, *to fetch Him from* Hurst-*Castle. I do not remember any hard Carriage towards Him.*

Court. Mr. *Harrison*, You have said, that you deny that of *Blacknings*; which the *Witness* hath sworn: and somewhat else touching the King, in His way to *London*: that the *Witness* hath sworn to also. The *Jury* must consider of it; both of their *Oaths*, and your *Contradictions*

ons. If you have nothing more to say, which tends to your Justification: We must direct the *Jury*. The end of your Speech is nothing, but to infect the People.

Mr. Harrison. *You are uncharitable in that.*

Justice *Foster*. My *Lords*, this ought not to come from the *Bar* to the *Bench*; if you *sally out* thus about your Conscience. If your Conscience should be a darkened Conscience: that must not be the Rule of other mens Actions. What you speak of that Nature is nothing to the Business. If you have any thing to say, by way of Excuse for your self for matter of *Fact*, you may speak: but, if you will go on as before, it must not be suffered.

Mr. Harrison. *The things, that have been done, have been done upon the Stage, in the sight of the Sun.*———

Court. All this is a Continuance of the Justification, and Confession of the *Fact*. We need no other *Evidence*.

Counsel. He hath confessed his *Fact*, my *Lords*. The matter it self is Treason upon Treason: therefore we pray Direction to the *Jury*.

Lord *Chief Baron*. Mr. *Harrison*, I must give Direction to the *Jury*: if you will not go further touching the *Fact*.

Mr. Harrison. *My* Lords, *I say what I did was by the* Supreme Authority. *I have said it before, and appeal to your own Consciences, that this* Court *cannot call me to question.*

Lord *Chief Baron*. Mr. *Harrison*, you have appealed to our Consciences. We shall do that, which, by the Blessing of God, shall be just; for which we shall answer before the *Tribunal* of God. Pray, take heed of an *Obdurate*, *Hard* Heart, and a *Seared* Conscience.

Mr. Harrison. *My* Lords, *I have been kept six Months a Close Prisoner, and could not prepare my self for this Trial by* Counsel. *I have got here some*

ſome Acts *of* Parliament *of that* Houſe *of* Commons, *which your Lordſhips will not own*; *and the* Proceedings *of that* Houſe, *whoſe Authority I did own*

Lord *Chief Baron*. This you have ſaid already. If you ſhew never ſo many of that Nature; they will not help you: you have heard the Opinion of the *Court*, touching *that* Authority. They all unanimouſly concurr in it.

Gentlemen of the *Jury*, you ſee, that this *Priſoner* at the *Bar* is Indicted for *Compaſſing*, *Imagining*, and *Contriving* the Death of our late Sovereign Lord, King *Charls* the Firſt, of Bleſſed Memory. In this *Indictment* there are ſeveral things given, but as Evidences of it: they are but the *Overt-Acts* of it. The one is, firſt, that they did meet, and conſult together about the putting the King to Death: and that alone, if nothing elſe had been proved in the *Caſe*, was enough for you to finde the *Indictment*. For the *Imagination* alone is Treaſon by the Law. But becauſe the *Compaſſing* and *Imagining* the Death of the King is ſecret in the Heart, and no man knows it but God Almighty: I ſay, that the Imagination is Treaſon: yet it is not ſuch, as the Law can lay hold of; unleſs it appear by ſome *Overt-Act*. Then the firſt *Overt-Act* is there *Meeting*, *Conſulting*, and *Propoſing* to put the King to Death. The ſecond is more open; namely their *Sitting* together, and *Aſſuming an Authority* to put the King to Death. The third is *Sentencing* the King. And I muſt tell you, that any one of theſe Acts prove the *Indictment*. If you finde him guilty but of any one of them; either *Conſulting*, *Propoſing*, *Sitting*, or *Sentencing* (though there is full Proof for all) yet notwithſtanding you ought to finde the *Indictment*. You have heard what the *Witneſſes* have ſaid, and the *Priſoner*'s own Confeſſion. Witneſſes have ſworn their ſitting together; and that he was one. One ſwears he ſate *four* times; another *twice*; ſome *ſeveral times*. There are ſeveral Witneſſes for this: as Mr. *Maſterſon*, Mr. *Clark*, Mr. *Kirk*, and Mr. *Nutley*. And then then you have another thing too, which truly the *Priſoner* did not ſpeak of. Witneſs was given againſt him, that he was the Perſon, that Conducted the King: this was before that, which he would have to be done by a *Legiſlative Power*: and that is another *Overt-Act*. If a man will go about to *Impriſon* the King; the *Law* knows what is the ſad Effect of ſuch Impriſonment. That hath often been adjudged to be an Evidence of *Imagining*, and *Compaſſing* the Death of the King. That man, the

the *Prisoner* at the *Bar*, it hath been proved to you, did *Imprison* the King: and it appears by his own Hand to the *Warrant* for summoning of that Traiterous Assembly, *The High Court of Justice*, as they called it. And also it appears by his Hand to the *Warrant* for Execution, that *Bloody Warrant*. He hath been so far from denying, that he hath Justified these Actions. The *Evidence* is so clear, and pregnant, as nothing more. I think you need not go out.

The Jury *went together at the* Bar, *and presently unanimously agreed on their* Verdict: *whereupon they were demanded by the* Clerk,

Clerk. Are you agreed upon your *Verdict*?

Jury. *Yes.*

Clerk. Who shall say for you?

Jury. *Our Fore-man.* (Which was Sir *Thomas Allen*)

Clerk. *Thomas Harrison*, Hold up thy Hand. Gentlemen of the *Jury*, Look upon the *Prisoner*. How say ye? Is he *guilty* of the Treason, whereof he stands *Indicted*, and hath been Arraigned? or *Not guilty*?

Fore-man. Guilty.

Then the Keeper was charged to look to the Prisoner.

Clerk. What *Goods*, and *Chattels*, had he at the time of committing this Treason, or at any time sithence?

Fore-man. None to our Knowledg.

Which Verdict *being repeated to the* Jury *by Mr.* Clerk of the Crown, *the* Jury *owned it unanimously.*

Mr. *Sollicitour Gen.* My *Lords*, upon this *Verdict*, that hath been given against the *Prisoner* at the *Bar*, I humbly move, that we may have *Judgment* given.

Your

Your *Seſſions* will be long, and your work will be great; his Demeanour hath been ſuch, that he doth not deſerve a *Reprieve* for ſo many Days, that you are like to ſpend in this *Seſſion*.

Court. Mr. *Harriſon*, they deſire *Judgment* upon the *Verdict*. What do you ſay for your ſelf, why *Judgment* ſhould not paſs againſt you?

Clerk. *Thomas Harriſon*, hold up thy Hand. What haſt thou to ſay for thy ſelf, why *Judgment* ſhould not paſs againſt thee, to dy according to *Law*?

Mr. Harriſon. *I have nothing further to ſay; becauſe the* Court *have not ſeen meet to hear what was in my Heart to ſpeak, I ſubmit to it.*

The *Cryer* made *Proclamation* for *Silence* whileſt *Judgment* was in giving.

Lord *Chief Baron*. You, that are the *Priſoner* at the *Bar*, you are to paſs the *Sentence* of Death; which *Sentence* is this. The *Judgment* of this *Court* is, and the *Court* doth award; that *You be led back to the place, from whence you came, and from thence to be drawn upon an Hurdle to the place of Execution, and there you ſhall be hanged by the Neck, and being alive ſhall be cut down, and your Privy-Members to be cut off, your Entrails to be taken out of your Body, and (you living) the ſame to be burnt before your Eyes, and your Head to be cut off, your Body to be divided into four Quarters, and your Head, and Quarters, to be diſpoſed of at the pleaſure of the King's* Majeſty: *and the Lord have Mercy upon your Soul.*

And then *Proclamation* was made for *Adjournment* of the *Court* to this place till ſeven of the Clock to morrow morning. And all *Jury-men*, and *Witneſſes*, were commanded to be at the ſaid *Place*, and *Time*, upon Forfeiture of an hundred Pounds apeice.

October

Octob. 12. 1660.

The Proclamation for Silence.
The Jury called.
Prisoners brought to the Bar, *viz.*

John Jones, Adrian Scroope, Thomas Scot, Gregory Clement, John Carew.

Cryer. Sir *Thomas Aleyn.*

Clerk. Sir *Tho. Aleyn,* lay your hand on the Book, look upon the Prisoner at the Bar.

Scroope. *I challenge him my Lord.*

L. C. Bar. That you may not mistake if you challenge in this manner, and do not joyn in your challenges, we must try you severally one after another; I must tell you the course of the Law, If one challenge one, and another challenge another, we must sever, and go to Tryal one by one. Call the next.

Cl. Sir *Henry Wroth.*

Scroop. *I challenge him.*

L. C. Bar. Then we must go on severally, set all aside but Mr. *Scroope*; Mr *Scroop*, you may challenge particularly whom you will till you come to 35. if you go beyond that number, you will lose the benefit of the Law.

Scr. *I desire my Lord, that whosoever was challenged yesterday, may not be called again,*

Court. No, that cannot be, that is nothing to you. The Court thereupon proceeded, and called ——

Challenged, *John Lisle, Nic. Raynton, Thomas Wynter, Thomas Franklyn, Randal Nichol, Jo. Kirke, Ambrose Scudamore, George Tirrey,* who were all challenged.

Jury *Thomas Willet, Hen. Marsh, Charles Pitfield, Chr. Abdy, Rich. Cheny, Tho. Bide, Jo Smith, Richard Abel, Ralph Halsal, Jo. Gallyard, Tho. Swallow, Sam. Starnel,* were admitted and sworn on the Jury.

Cl. Cryer, make Proclamation. If any man can inform my Lords the Kings Juſtices, the Kings Serjeant, or the Kings Attorney, before this Inqueſt be taken between our Soveraign Lord the King, and the Priſoner at the Bar, let them come forth and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his delivery, and all others bound by recognizance to give evidence againſt the Priſoner at the Bar, let them come forth and give their evidence, or elſe they ſhall forfeit their recognizance.

Cl. Adrian Scroope hold up thy hand; you Gentlemen that are ſworn, look upon the Priſoner, and hearken to his charge; you ſhall underſtand, &c. upon this Indictment he hath plead not guilty.

M. Soll. May it pleaſe your Lordſhips and you Gentlemen of the Jury; this Priſoner at the Bar ſtands indicted for compaſſing and imagining the death of the late King of bleſſed memory. The Indictment ſets out, that to that end and purpoſe the Priſoner at the Bar did with others, aſſemble and ſit together at *Weſtminſter Hall* conſulting upon him, and uſurped an authority to proceed againſt the life of our ſaid late Soveraign & in perſuance of that, our late Soveraign was brought to his death. Theſe things are alledged in the Indictment as ſerveral overtracts to ſhew the treaſon of his heart, which was the compaſſing and imagining the death of the King; Compaſſing and Imagining are the words of the Statute, the reſt of the Indictment is but as ſo many overtacts, evidences and manifeſtations of that corrupt and wicked heart of his, by which he firſt thought ſuch a thought againſt his Soveraign. The manner of our evidence ſhall be this: Before they could com to accompliſh this damnable deſign it was neceſſary to meet in a trayterous aſſembly, which they called the *High Court of Juſtice*, that under the pageantry and mockery of that, they might pretend to murder him by a ſentance; and before that aſſembly could come to ſit, there was a Precept ſet forth very formerlly to ſummon them to ſit. This Priſoner at the Bar is one of thoſe perſons, who under his hand and ſeal did ſummon that Court to ſit upon the life of our late Soveraign. When the Court in obedience to that ſummons (as they called it) did meet, they ſate ſeveral times, and he among them; they did proceed with a wonderfull impudence (as they had begun) to pronounce ſentence of death upon our late Soveraign, My Lords, this Priſoner at the Bar was amongſt them, and was at that Court, and gave the ſentence. When they had done, that they might compleat

Pleat their villany, they made a bloody Warrant for severing the head of his late Majesty from his body, and the hand of the Prisoner at the Bar is to that Warrant also; and this is the scope of our Indictment.

Scro. My Lords, may I have liberty to speak?

Court. If you do confess this which is opened in evidence against you, we shall not need to examine any Witnesses.

Scr. Examine what you think fit, if I understand that worthy Gentleman that speak last, he said that my hand was to the Warrant for Execution; My Lord, if I can see my hand I can tell, and I will not deny my hand.

Court. Shew it him, which was done acorrdingly.

Scr. My Lords, I will not deny but that it is my hand, but it is not my seal.

Council. Cryer call Mr *Masterson*, Mr *Krike*, Mr *Clarke*, Mr *Carr*, who were all sworn.

Mr *Masterson*, pray tell my Lords and the Jury, whether you did see the Prisoner at the Bar in that which they called the *High Court of Justice*, sitting as a Judge upon the late King.

Mr *Mast.* My Lords and Gentlemen of the Jury, I saw upon the 22. or 23. of *Jan.* in the year 1648. the Prisoner at the Bar sitting upon the Bench as one of the Judges in that which they called the *High Court of Justice*; the King standing a Prisoner at the Bar, I say either 22. or 23. But I say particularly upon the 27th. day of *Jan.* 1648. in which the sentence was passed upon the late King, I saw the Prisoner at the Bar sitting upon the Bench, in that which they called the *High Court of Justice.*

Coun. How did he demean himself when the sentence was read?

Mr *Ma.* When the sentence was read, it was by the President (as he was called) of that Court, said to be the Sentence and Judgment of the whole Court, upon which the Prisoner at the Bar rose up, as to my apprehension, testifying his assent. All their assents were taken so and no otherwise to us that were as spectators.

Scr. I beseech your Lordships that I may speak without offence, and answer to this.

Court. Mr *Scroope*, you may please to have Paper, and pens, and Ink, to take Notes, or to ask any questions.

Scr. My Lords, give me leave to ask him this question, whereabouts he did see me sit in the Court.

Court. M. *Ma.* you hear the question, pray answer to it.

Ma. My Lords, I cannot particulary say where he sat, but I saw him in the Court, and to the best of my remembrance it was on the second seat on the left hand of *Bradshaw.*

Scr. I would not give offence to the Court in any kind, I am now pleading for my life, I desire to take a little liberty to ask this Gentleman, if ever he and I were in company together that he knows me so well.

M. For my part I do not remember I saw his face before the sitting of that Court: If this Gentleman ask me if I were ever in his company, I know not how I may construe the word Company: but I am sure I never eat nor drank with him, I have seen him very many times at Commites, more then twenty times since that business.

Mr *Clark* called,

Coun. Mr *Clark* you have heard the question, did you ever see the Prisoner at the Bar in that which they called the Higih Court of Justice.

Mr *Clark,* I do remember in the year 1648. I saw the Prisoner sitting in that which they called the High Court of Justice upon the Tryal of the King.

Scr. My Lords you may desist in examining witnesses touching my sitting.

Court. Do you acknowledge you did sit in that which they called the High Court of Justice,

Scr. Yes, I see it proved, and I see a Gentleman here in my eyes that I know very well, I will not deny it.

Court. Did you sit upon the sentence day, that is the Evidence, which was the 27th. of *January*: You are not bound to answer me; But if you will not we must prove it. Do you confess that.

Scr. I do not confess that I stood up as assenting to the Sentence. Mr *Clark* called.

Coun. Mr Clark what say you to that?

Clark. I did not take particular notice of him that day, that he stood up; but the whole Court stood up to my apprehension, but I took notice that he was there then present.

Coun. Mr *Clark* do you remember that you saw any of them sit?

Cl.

Cl. I did not take notice of any that sate then, but all stood up to my thoughts. Mr *Carr* called.

Coun. Mr *Carr*, tell my Lords and the Jury whether you did see the prisoner at the Bar sitting in that which they called the High Court of Justice.

Carr. My Lords and Gentlemen of the Jury, the 22. 23. and 27th of *Jan.* 1648. I was present when the names of that they called the High Court of Justice were called, and amongst others that were Judges of that Court as was Printed in a Paper which I then had in my hand, I found the name of Mr *A. Scroope*, who I saw did there set and appear.

Mr. Carr looked in that Paper when he gave this Evidence.

Scr. I hope you will not take any Evidence from a Printed List.

Coun. The manner of his Evidence is, he saith this, That he had this Printed Paper in his hand when the names of that Court were called, and marking the persons in that Paper who were present, and that you were one of them who did appear.

Scr. My Lord, I shall not dispute in regard of my want of skill in the Law, the Lawfulness of bringing in any Paper in Evidence into the Court I shall not despute against your Lordships: But by your favour, I do suppose there is no witness ought to use any Paper, or look upon any paper when he gives Evidence, but I shall submit it to your Lordships.

Mr. *Sol.* Ask him the question without his Paper; but yet nothing is more usual than for a witness to make use of a Paper to help his memory.

Scroop. The Gentlemen that speak last I cannot hear him.

Mr *Sol.* We do not need his Paper in this Case, he will tell it without a paper. Mr *Carr* speak without your paper.

Carr. My Lords, upon the calling of those that were Judges in that Court which they called the High Court of Justice then sitting, this Gentleman the prisoner at the Bar did answer to his name then called.

Scr. Did you see me?

Carr. I heard you answer, and saw you.

Scr. I pray he may be asked where about I sate in that Court.

Coun. Mr *Carr* you hear the question, answer to it.

Carr. I am not able particularly to tell now, it being many years since.

Scr. My Lord, observe of what value this Evidence is, I am sure

I never was in his company, I do not know that ever he saw me in his life: I beseech you give me leave to plead for my self in all humbleness and modesty my Lord.

L.C.Bar. Notice is taken of it Mr *Scroop*, God forbid you should be debarred of it.

Scr. I say he comes in with evidence of a Paper he heard my name called and marked it: It is strange that a Gentleman whom I never saw, I know not his name, nor I do not think he knew my name if he had met me.

L.C.Bar. I told you that was laid aside, and you heard him speak *viva voce* without a Paper.

Coun. Mr *Kirke* did you see the Prisoner at the Bar in that Court which they called the High Court of Justice for Tryal of the late King.

Kirke. My Lords and Gentlemen of the Jury I did see the Prisoner there, and I did wonder to see him there, which was the reason I took the more special notice of his being there.

Scr. Pray my Lord let me intreat one thing before he speaks that your Lordships will be pleased to speak to him to give in his Evidence with out any speech.

Coun. How can that be? Can he give Evidence without speaking?

Scr. I beseech you my Lords give me leave to say this, let him give in his Evidence in plain words without any speech.

L.C.Bar. Mr *Scr.* he must be excused, there are Circumstances inducing which are as much as the principal, this that he hath said is very material; saith he, I did see the Pirsoner at the Bar there, I did not expect it, and wondered at it, and therefore took the more notice—— Let him go on, ask him what question you will.

Scr. My Lord I submit.

L.C.Bar. Mr *Kirk* you must speak the truth, and the whole truth; go on.

Kirk. I say as I said before, I saw this Gentleman sitting in that which they called the High Court of Justice, and I did therefore wonder at it, because I did not expect him there: I came to know him formerly as he was called Captain *Scroope*.

Coun. Go on.

K. And as I said before, I saw this person, this Prisoner at the Bar

Bar, sit amongst the rest of those persons, Judges as they called themselves of the High Court of Justice for the Tryal of the King, I did more particularly take notice of this person because I did not expect him there: I knew him formerly upon this report, being an eminent man, by the name of Captain *Scroope*, and at that time was an associate of one Captain *Vivers* and Captain *Wingham*, I had not seen him some years before this business, and seeing of him there I did the more particularly take notice of him.

Scr. Have you done Sir? I beseech your Lordship ask him what imployment he had there himself when he saw me there.

K. My Lord I was there to hear the Tryal.

L.C. Bar. Mr *Scroope* I am not willing you should have any thing of interruption unless you reflect upon any person, that concerns not you Mr *Scroope*, do not think it will be for your advantage, nor is it proper for you to ask.

Scr. In all humbleness I do speak it to your Lordships, that your Lordship will please to consider that if he had any imployment in that business himself, how fit a witness he is against me.

Court. Much fitter.

Scr. If it be so I have done,

K. My Lord, I was there only as a spectator, I went only there to see and hear what was there to be seen and heard, I stood there and took Notes in Characters of the proceedings, and several others with my self did the like, and we compared them together, that was all my business at that time, and I saw him sit there the 27. day of *Jan.* 1648. which was the day of the sentence against the King,

Scr. Where abouts did you see me sit there?

K. It is not I think imaginable that any person should be able after so many years, possibly to say were any person sate, but to the best of my remembrance you sate upon the second bench next the President: But I dare not be positive in that, I dare not justifie it upon my oath, it is but my remembrance.

Here Mr *Scroope* talk to one that stood near him.

L.C. Bar. We must desire that of you Mr *Scroope*, that you will not speak to any here but what the Court may hear.

Scr. I shall observe your commands.

Mr *Coitmore* sworn.

Coun. Did you see the Prisoner at the Bar sitting in that which they

they called the *High Court of Justice*, as a Judge upon the King?

Coit. I did see him.

Coun. When, what day?

Coit. I cannot name the day, I was there three dayes of their sitting, there I saw him once or twice, once I am sure.

Scr. What day?

Coit. I cannot remember.

Coun. Did he sit there as a Judge upon the King?

Coit. He sate amongst the rest as a Judge.

Scr. Give me leave to ask him where abouts he saw me sit.

Coun. Where did you see him sit?

Coit. I cannot remember the place, he was among them, I saw him either one or two dayes, there was a great company of them together.

Coun. Mr *Nutley*, did you see the Prisoner at the Bar sitting in that which they called the High Court of Justice?

Nut. If it please your Lordships, I was there in the Court those four several dayes that they sate in Judgment, I heard the Prisoner at the Bar called by his name, I did take notice he was there, truly I think he was there twice or thrice to my remembrance.

Coun. Can you tell what day, whether the 27. of *Jan.* 1648.

Nut. I cannot say positively, but to the best of my remembrance he was there, that was the last day when Judgment was given.

Mr *Baker* sworn.

Coun. M. *B.* what say you, did you see the Prisoner at the Bar, sitting in that which they called the High Court of Justice?

Ba. Yes, I did see Col. *Scrope* on Tuesday the 23. of *Jan.* 1648. very particularly stand up and answer to his name.

Coun. M. *Coitmore*, are you acquainted with Col. *Scroops* hand?

Coit. I have had several Letters from him.

Coun. M. *Scroope*, have you a mind to see the Warrant for summoning the Court?

Scr. I desire to see it; I do, not remember I set my hand to it.

Court. Shew it him. It being shewed him.

Scr. I cannot say it is my hand.

Coun. It is too true, we shall prove it to you.

Court. Shew it to M. *Coitmore*.

Scr. Be pleased to let me see it once more, which was again shewed him: Truly, My Lord, I will save him the labour.

Coun

Coun. You do acknowledge it was your hand?

Scr. I'le save him the labour, for I confess I do not love men should be put to there oaths more then needs.

Here likewise the Warrant for Execution was read.

Coun. My Lords, we shall conclude our evidence with Major General *Brown*, the Lord Mayor Elect.

The Lord Elect sworn.

Coun. My Lord, be pleased to tell my Lords what discourse hath lately passed between the Prisoner at the Bar and you, concerning the death of the King.

Lord Elect. My Lords, upon some occasion I was accidentally at the Chamber of the Speaker, there I met this Gentleman whom indeed I knew not; he told me who he was; and when I understood who he was, I said to him (or words to this purpose, I cannot tell the words) because I would not distasse him, and say *you* have done this, therefore I put it thus: *We* have done this, What a sad case have *we* said I brought this Kingdom unto? Why, saith he? you see, said I, how it is ruined now the King is murthered, *&c.* Saith he *some are of one opinion, and some of another.* Sir, said I, do you think it was well done to murther the King; saith he, *I will not make you my confessor*, Sir, it was much to this purpose.

Coun. When was this spoken?

Lord Elect. Truly I do not know the day, but it was that day that Sir *H. M.* rendered himself to the Speaker, it was since the coming in of the King.

M. *Sol.* Neither time, nor the hard of God appearing in this business, nor the condition he was in, was ever able to bring this Gentleman to be sorry for his offence; but we do not give it as any evidence of his crimes: You have heard the Prisoner confesse the two Warrants; you have heard by several witnesses produced, that he did sit in that which they called the High Court of Justice, by three, that he sat particularly on that day they called the day of their Judgment; you have heard how little penitence he hath had, by his Declaration to the Lord Mayor Elect.

Scr. *I hope now that you have heard the Evidence against me, that you will give me leave to make some defence for my self.*

L. C. Bar. God forbid other wise, but that yo should have free liberty.

Scr. *Truly my Lords, though my breeding hath not been in the way*

of the Laws, and therefore I have a great disadvantage, when there be such learned Gentlemen as these are to plead against me. I must confess to you, I have something for matter of Law to plead for the justification of the fact, though I would not undertake to justifie the person, this I humbly entreat, if it may be granted, that I may have some time given me and some Counsel, that I may answer matter of Law.

L. C. Bar. M. *Scroop*, if you have any thing of matter of Law, for which you would have Counsel, you must alledge that matter first; the use of Counsel is onely to put in certainty, what you have of matter of Law, and then the Court and Judges must judge of it. If you have matter of Law, you must tell what it is; if it be matter that there is cause to over-rule it, there is no cause of making further use of Counsel. If one be indicted for murther, when he comes to Tryal, he will say, I have matter of Law to plead; What is that? That Murther is no felony: Do you think Counsel will be admitted in this? If you do alledge what this matter is wherein you desire Counsel, you shall have your answer.

Scr. *My Lords, as well as I am able to do it I shall do it; my Lord, I was not of the Parliament, take notice of that, and that which was done in the High Court of Justice, it was done by a Commission from the Parliament. My Lord, it was that Authority which was then, I will not say it was so, because I would not give offence; it was that Authority then which was accounted the supream Authority of the Nation; and that Authority, My Lord, that a great many of the generality of the Nation submitted to. My Lord, I having received a command from that Authority, what I did was in obedience to that Authority: My Lord, I have not had time to consider of these things, because I have been for these six weeks time shut up a close Prisoner, and that I could neither come at Counsel nor any thing else, nor to get any thing to prepare for it, therefore I desire your Lordships to do me the favour, if you see any weight in it, to let me have time and Counsel assigned me.*

L. C. Bar. Have you done Sir?

Scr. *Yes.*

L. C. Bar. Then I take it, this is the effect of what you have said, if I have not taken it aright, tell me so; You say you justifie the fact though not your Person; That you were not of the Parliament;

ment; That what was done was by Commission from the Parliament: Be pleased not to mistake me; for I say you said this: That that which I have to plead in justification of it, I do not say that I justifie my self, but that which I have to say is for justification of the Fact: I was first no contriver of the business; And then secondly, I did it by vertue of the Command, and in obedience to the Authority of the Parliament: that that Authority was then accounted the Supream Authority of the Nations, and that the Generality of the Nations did submit to their Authority; I think I have repeated all you have said. Then Mr. *Scoop* you must know this, That there is no cause at all why Counsel should be given for what you speak; I profess it rather tends to the aggravation then extenuation of what you did. First, you say you did it by Authority of Parliament; I am afraid you have been mistaken as well as others by the word Parliament, what doth that mean? I am sure you and every one knows that there was not one President ever heard of till this, That the House of Commons should take upon the Legislative Power, and make such an Act as this was, there was no colour for it. Then for men upon their own heads never heard of before, and against the Liberty and Freedome of the People, that they should call it the Parliament when there was but 46 sate, whereas there was above 240 excluded; & how you can call this a House of Commons is a great wonder to me; but I tell you this take it for granted, that if they were the most perfect House of Commons that could be: Did ever the House of Commons before this single Act, take upon them the Legislative Power without the Lords: the Acts are begun in the Commons House; when you have done, if the Lords do not pass it it, is abortive; if it be done by both Houses, there ought to be a Royal assent: But the Lords had rejected this Act; then they must take upon them these 46 men, whereof I do believe there was not above 25 or 26 men that did vote this, and this must be called the Parliament, the Commons of *England*. I would fain know whether any man hath heard that the House of Commons took upon them the Legislative power before this Act; but this hath been over-ruled in the like Case, and I shall say no more to it. What is the Oath of Allegiance? is it not that you would defend the King, his Crown, Rights and Liberties, against all persons whatsoever? It was not only against the Pope, (as some would have it)

but the word is, *or otherwise*: They broke the oath of Supremacy: which was, *That the King was the Supream Governour of these Nations*: They swore that they would maintain and keep all Priviledges, Immunities, Preheminencis, annexed to the Imperial Crown of this Realm; there is difference between some Crowns and Imperial Crowns; An Imperial Crown, it was that which was not to be touched in the Person: We do not speak any thing of the absolute power of the King; for you see He cannot Judge concerning the death of his Father but by Laws. When you swore this Allegiance, all those Members to break all this at once, This would be so far from having any colour of Authority, that he that justifies it, justifies it against the light of conscience and Laws: You say you did it by Commandment from them; He that doth a command by such an Authority, it is his guilt: Our Law books say, That if a Court at Common Law exceed their Jurisdiction in that Case, he that obeys that command is punishable. In the Court of Common Pleas, if there be an appeal there for Murther, it is only proper to the Upper Bench; and therefore if the party be condemned, sentenced, and executed thereupon, the Executioner in that Case is guilty of Murther, for obeying that Authority which was indeed no Authority; And therefore whereas you would go about to justifie the Fact, because you did it by Command of that Authority, that is an Aggravation, That when men shall assume an Authority which is a Devil at the noon day appearing without Vizors; I say, shall assume an Authority never heard of before, If men will countenance their Acts by obeying of them, it is an Aggravation, We have already Declared this in the Case of the Prisoner yesterday; We are all satisfied in the Law in that Case: It is so clear a point in Law, that my Brethren here and we did overrule it yesterday in the like Case, and so we must now; and I hope that all do concur in this opinion that hath been delivered.

Lord Finch. I hope all do concur in this opinion delivered by my Lord Chief Baron: You shelter your self under a Command of the House of Commons; But let me tell you and all the world, That if the House of Commons (let it have been never so compleat) had given a Command, it had been a thing no ways justifiable; the Justification is an Aggravation.

Scr. *My Lord, I do see that every thing I speak, though it be for the clearing of my self from your ill opinion, I see it is taken in an*

ill

insense (I humbly beseech pardon for the Expression) if I erre I will crave your Lordships pardon; But my Lord, I say this, If I have been misled I am not a single person that have been misled. My Lord, I could say, (but I think it doth not become me to say so) That I see a great many faces at this time that were misled as well as my self; But that I will not insist upon: I say this, That I hope an Errour in Judgement shall not be accounted Malice, or an Errour of the Will: Truly (my Lord) I never went to the work with a malicious heart: I humbly desire your Lordships to take notice of it, That I never bore any malice at all against his late Majesty.

L. C. Bar. Mr *Scroop* have you done?

Scr. *My Lord, I do beseech your Lordship to take notice, That an Errour in Judgement is not an Errour in the Will.*

L. C. Bar. Mr *Scroop*, I am very glad to hear you say so; But let me tell you what the Law saith; The Law in this Case creates the malice. If a man do an act of this nature, that may, be some kind of excuse to God, but towards man you are to look to the Fact, the Law implies the malice. If there be any thing you will say in the Extenuation of your offence, we will be very glad to hear that may tend to your help.

Scr. *My Lord, There is one Evidence comes in against me, that I must confess that I am very sorry to see; and my Lord there was a saying it is by my* Lord Mayor Elect: *Truly he is a worthy Gentleman, but I desire the Lord may forgive that which he hath spoken: Truly my Lord, I did never intend any thing in this, neither can I directly remember that I spake those words directly, as my* Lord Mayor Elect *doth speak: I do beleeve my* Lord Mayor *cannot very well remember them himself; for he saith,* So far as he can remember: *I must confess that when I was there, and had appeared according to the Proclamation, that such discourse somewhat like it was raised, not of my procuring, I did not procure the Dicourse; I never intended the Justification of the Fact; but it was my ill success that I should meet with that worthy Gentleman to have so much discourse with him.*

L. C. Bar. Mr *Scroop*, my Lord Mayor Elect saith no further then this, So *far as he remembers*, and the words that you should say were these, *That some are of one opinion, and some are of another.*

Scr. *Upon the death of the King* (My Lord) *I must confesse to*

you

you, that somewhat I said to him, but I cannot own that I said these words. My Lords, *He is a worthy person, I do not desire to speak any thing to degenerate in the least kind from him, it is but his yea & my no, there was no body there.*

L.C. Bar. Have you any thing more to say for your self.

Scr. My Lord, if your Lordship do over-rule it so that I may not have Counsel, I have little more to say.

L.C. Bar. You have heard the sence of the Court in that particular, you cannot have Counsel allowed you as to the matter you have pleaded.

Scro. I have done but only this, My Lords, I know not whether it be seasonable to mention it, I came in upon the Proclamation; and My Lord, by means of these unhappy words that have been reported of me in the House of Commons, whereas before I was no excepted person, I came to be excepted, and upon the very last day of the passing that Act, I never was excepted before the very last day: I beseech you take notice of this.

L.C. Bar. M. *Scroop,* That is a thing that is not before us, but there will be a proper time to consider of it in another place, that is nothing to the tryal; have you any more to say Sir?

Scr. No, My Lord; Will your Lordship please to let me speak a word to the Jury.

L. C. Bar. If you speak to the Court, the Jury will hear it.

Scr. Truly my Lord, This I do perceive, that I am under a very great prejudice as to this fact, It hath been the case of many Gentlemen besides my self, I desire that these Gentlemen would take my case into consideration as they would their own, and I desire that the Lord would give them direction that they may do that which is according to Justice and Mercy; that is all I have to say my Lords.

L.C. Bar. You Gentlemen that are sworn of this Jury, you see the Prisoner M. *Scroop,* hath been indicted for imagining and contriving the death of his late Majesty of blessed memory, King *Charles* the first; you see there are several things in this Indictment, the charge is the Imagining and compassing the death of the King. In the Indictment there are several matters of fact to prove this Imagination. The Imagination is the Treason, the matters of fact to prove it are but the evidences of that imagination; if any one of them be proved to you it is sufficient, the one is consulting

and

and meeting together how to put him to death, the other sitting and assuming Authority to bring him to Tryal. Then you have a sentence by the Court to put the King to death thereupon, Afterwards he was put to death; any one of these matters are evidence enough for you to prove the Indictment; for though the Indictment concludes that so they did imagine and compass the death of the King, and that the King was put to death in manner and form as aforesaid; the manner and form aforesaid goes to this, To the imagination of the heart, for the Law did not think any one would put the King to death, they thought it so high a crime, they thought it not convenient to bring it into the Statute. But the compassing and imagining the death of the King is made Treason: Then to apply it, this fact to the Gentlemen, it appears to you here by the proofs against him. Here is M. *Masterston* he swears he saw him sit in that pretended Court, there was your evidence of the first, the first was their meeting together, and of the second too, They did assume Authority upon them; and he swears further to the sentencing, that the Prisoner was there. Here were the three overt acts all proved. He confesses he did sign the Warrant for putting the King to death: This without any witness at all, was a sufficient proof, a proof of proofs. The other Witnesses you hear what they say, you hear M. *Kirke*, M. *Clarke*, M. *Nutley*, swear all to his sitting there. It is true, when this comes to the particulars where he sate, you must remember it was twelve yeers ago, when a man sees a mixt number of about eighty persons; it is impossible a man should be able to answer this particular after twelve years where such a one sate: but you may see by his sentencing what he did. They all witness they saw him positively, and one tells you, he wondered he saw him there, and indeed it might be a wonder, for M. *Scroop* (to give him his right) was not a person as some of the rest; but he was unhappily ingaged in that bloody business, I hope mistakenly; but when it comes to so high a crime as this, men must not excuse themselves by ignorance, or misguided conscience. As to God for this horrid murther of the King, somewhat may be, but here is no excuse or extenuation before man, there may be I say before the Lord. You see the proof is full against this Gentleman, as full as may be, witnesses saw him sit, and he himself confessed he signed the Warrants. I have no more to say to you; but Gentlemen

men you see what it is, I think for matter of fact you need not go from the Bar, but I leave it to you.

Scr. My Lord ——

L.C. Bar. M. *Scroop* if you have any thing to say, when the Jury have brought in their Verdict, if you will say any thing for matter of mercy, the Court will hear you.

Scr. I thank your Lordship.

The Jury went together, and presently setled themselves in their places.

Cl. A. S. hold up thy hand. Look upon the Prisoner; How say you, is he guilty of the Treason whereof he stands indicted, and hath been arraigned, or not guilty?

Jury, Guilty.

Cl. What Goods and Chattels, *&c.*

Jury, None that we know.

L.C. Bar. If you will say any thing the Court will hear you.

Scr. I have no more, My Lord, but refer my self to this honorable Court.

Clerk. Set *John Carew*, *Tho. Scot*, *John Jones*, and *Gregory Clement* to the Bar, who were set accordingly; and being commanded, they severally held up their hands.

Cl. These men that were last called, *&c.*

Sir *Tho. Aleyn*, lay your hand on the Book: Look, *&c.*

Carew. I challenge him.

L.C. Bar. Are you all agreed as to your Challenges.

Pris. No, my Lord.

L.C. Bar. Then we must do as before, sever you, and go to tryal severally: take the three away, and let M. *Carew* stand at the Bar.

Challenged, *Charles Pitfield*, *Wille. Will. Smiths*, *Rich. Rider*, *Edward Rolph*, *James Shercroft*, *Tho. Usman*, *Francis Beal*, *Will. Whitcombe*, *Samuel Harris*, *Jo. Nicol* of *Finchley*, *George Rigth*, *Tho. Fruen*, *Ab. Newman*, *Tho. Blithe*, *Will. Vincent*, *James Hawley*, *Chr. Abdy*, *Tho. Bide*, *John Smith*, *Abr. Scudamore*, *Ralph Halsel*, *John Gallard*, in all 23.

Jury sworn, *Robert Clarke*, *Thomas Grover*, *Rich. Whaley*, *Sam. Greenhil*, *Nicholas Raynton*, *Tho. Winter*, *Rich. Cheney*, *John Kerk*, *Rich. Abel*, *Thomas Marris*, *George Turrey*, *Thomas Swallow*, in all 12.

If any man can inform my Lords the Kings Justices, *&c.*

John

Cler. John Carew, hold up thy hand.

You that are sworn, look upon the prisoner: You shall understand, &c.

Sir *Edw. Turner*. May it please your Lordships, our Hue and Cry still proceeds against the Murtherers of our late Soveraign Lord King *Charles* the First of blessed memory, and this Gentleman the prisoner at the bar is apprehended as one among others for shedding that precious blood. Gentlemen of the Jury, he stands indicted before you, For that he (I cannot express it better) not having the fear of God before his eyes, but being seduced by the instigation of the Devil, he did imagine and compass the death of his said late Majesty. In prosecution of this, Gentlemen, there be several things that are mentioned in the Indictment, which are the open acts to discover to you these secret and private imaginations. He did meet and consult with divers persons touching the death of the King, that did usurp and take upon them to exercise a Power and Jurisdiction to try the King; and finally most horribly put him to death. The Treason by the Statute of 25 *Edw.* 3. and which you are to enquire of is, the imagination and compassing the death of the King, the rest of the Indictment are but particulars to prove that he did so imagine and compass the death of the King. If we shall prove these or any of these facts, you have then sufficient to convict them. There was a thing they called a High Court of Justice that was set up, wherein they did intend to try our late Soveraign Lord, and a Precept made, and that under the hand and seal of the prisoner at the Bar amongst others for summoning and convening that bloody Court, where (among the rest of the Miscreants) the prisoner at the bar did sit and had confidence, nay impudence to pronounce Judgment against his Soveraign. In this he rested not, but he among them set his hand and seal to that bloody Roll or Warrant for putting him to death, which accordingly was done, and to these several open acts we shall call out witnesses and so proceed.

M. *Masterson*, M. *Clark*, and M. *Kirke* sworn.

Coun. M. *Masterson*, look upon the prisoner, did you see him sit in that they called the High Court of Justice?

Lord chief Baron, *Mr. Carew*, if you will have pen, ink and paper, you may have it, pray call for it.

Carew, I have no need of it.

 Coun.

Coun. M. *Masterson*, did you see, &c.

Mr. My Lords, and Gentlemen of the Jury, I was present at that Assembly, which they called the High Court of Justice for tryal of the King, upon the 22, 23, and 27. days of *Jan.* 1648. and there I saw the King stand a Prisoner at the Bar. I saw this Gentleman the Prisoner at the Bar sit upon the Bench in that Court as one of his Majesties Judges, particularly upon the 27 day of *Jan.* which was the day of sentence, I saw him sitting there.

Coun. M. *Clark*, you hear the question; Do you remember that you saw the Prisoner at the Bar sitting in that which they called the High Court of Justice.

Mr. *Clark.* I remember I saw the Prisoner at the Bar sitting in that which they called the High Court of Justice, for the tryal of the late King, and particularly I took notice upon the 23 and 27 of *Jan.* 1648. that he was present.

Coun. What was done upon that 27 day?

M. *Clark.* The 27 day the late King was sentenced to death.

Jury. What is your name Sir?

Coun. His name his *William Clark.*

Coun. M. *Kirke*, what say you to the former question touching the prisoner, his being at that which they called the High Court of Justice.

Mr. *Kirk.* My Lords and Gentlemen of the Jury, I was present at the Tryal of his late Majesty of blessed memory, I saw that Gentleman the Prisoner at the Bar several days there, particularly the day of the sentence, which was the 27 day of *Jan.* 1648. when the sentence was passed he rose up assenting to it. Then the Warrant for summoning that pretended Court was shewed to M. *Kirke.*

Coun. Do you believe that hand to be the hand of M. *Jo. Carew* prisoner at the Bar.

K. My Lords, I do believe it to be his hand, I have seen his hand to several Orders, and being very well acquainted with his hand-writing, I believe it to be his hand as much as any man can possibly know another mans hand. Then the Warrant for execution of the King was likewise shewn him.

Coun. Is that the hand also of the prisoner at the Bar?

K. It is the same hand, my Lord.

Court. Was Mr. *Carew* a member of the long Parliament?

K.

K. Yes, My Lord.

Coun. Had you occasion to be acquainted with his hand?

K. My Lord, I have seen him set his hand several times to Orders and other Papers.

Mr. *Farrington* sworn.

Coun. Do you know (the Warrants being shewn him) those hands to be the writing of the Prisoner at the Bar?

Far. My Lords, really I believe these are his hands.

Court. Are you acquainted with his hand?

Far. Yes, My Lord, and I do believe these to be his hand-writing, I did not see him writ them, but so far as possibly a man can know anothers writing, I do believe these to be his.

Court. If you will ask to see them, you may see them M. *Carew.*

Ca. Please you to go on. Here they were both read.

Coun. May it please your Lordships, we shall not need to trouble the Jury any further, we have proved that the Prisoner did sign that Warrant for summoning that Court of Injustice; that he sate there and sentenced the King to death among other, and that he signed the Warrant for execution.

L. chief *Baron*, Mr. *Carew*, you have heard the evidence you may please to speak what you think fit for your self.

Ca. My Lords, the crimes that are here laid to my charge in this Indictment, are Treason and Murther.

L. chief *Baron*, I would not have you to be mis-informed, it is Treason onely, but it carries the other in with it, Murther.

Ca. Because you say it carries the other inclusively.

L. chief *Baron*, It doth, the charge is the compassing and imagining the death of the King, the other is but evidence.

Ca. Then the thing that I stand upon before the Lord, and before you all, I say before the Lord, before whom we must all stand and give an account of this action, which is a very great & weighty one: And whereas it is charged there, for I shall not trouble you with many words as to the particulars, or as to the proofs; but I shall ingeniously acknowledg what the truth is, and how far I can believe it, & therefore I say as to the begining of what was charg'd by the Council, and according to the course of the Indictment, that what was done in those things, that it was not having the fear of God before mine eyes, but being moved by the Devil, and that it was done with a Trayterous, Malicious, and Devilish heart, and

all those things mentioned in the Indictment: As for that I can say in the presence of the Lord, who is the searcher of all hearts, that what I did was in his fear, and I did it in obedience to his holy and righteous Laws.

Here the people hum'd--

L. chief *Bar.* Go on, he stands for his Life, let him have liberty.

Ca. It is part of my charge not to have the fear of God, &c. I did such and such things. I hope I may have liberty.

L. chief *Bar.* Go on, you shall not be interrupted.

Ca. I say that I did it in the fear of the Lord, and I will begin with that, and confess ingeniously the truth of it. When this came into question, there was an Ordinance brought in to try the King where my name was not as one of the Judges. There was another afterwards, an Act which I shall mention upon what ground by and by what that was, and that Act was brought in and committed, and names brought in, and my Name was not brought in, and so afterwards my name was put in, and seeing it I did strike it out: After the Committee was up I told them I did desire to be excused in such a business. I have told you how, wherein, and the ground that I did it, which I shall leave with the Lord, in whose hand your and my breath, and all our breaths are and therefore when it was so, I did because of the weight of it, as being a very great & special thing, and so I was very unwilling because of there being enough which I thought had more experience every way for so great a concernment as that was to be imployed rather then I, yet being satisfied with that Authority that did it; This is to shew you how that I had the fear of the Lord, and did weigh the things: After that, when the Bill was brought into the house my name was put in there with several others, so I came to be in; and what I did it was upon these two Accounts: First in obedience (as I told you) to the Lord, which was the cheif thing: And in obedience to that which was then the Supream Authority of this Nation: and therefore I shall mention these grounds very briefly, because indeed the things that are controverted here at this time, they have been controverted in the face of the whole world in several Nations; and the Lord hath given an answer upon solemne Appeals, to these things; I shall therefore mention them very briefly, because they have been so publique. The *Declarations* and *Remonstrances* that have passed between the King and Parliament concerning the beginning of the Wars ——

L. chief

L. chief Baron. Mr. *Ca.* I would be very loth to interrupt you; But I see what course is taken, and the peoples eyes are upon you. You seek delays, and against the course of Prisoners you say you will confess; but you do confess the Fact after you have spent the time. And all the Witnesses are heard for this that you speak of now; you go about to justifie as in the fear of the Lord, or any thing of that nature, that we cannot allow of; but we do allow you to speak and give the heads of what you will say as to the matter of Fact; but to hear you make discourses and debates which are a justification of a horrid and notorious Treason, we cannot hear it; we ought not to hear the maintaining of open Treason; cannot hear you to speak that upon your opening, which is Treason: We are willing that you open the heads of what you have to say; we are upon our consciences, and to appear before God for what we do, and so are you too; but remember the Devil sometimes appears in the habit of an Angel of light. If you will couch your matter in a few words, the Court affords you liberty, which is indeed beyond the strict Rules of Law.

Ca. *You say you sit here by the Laws of the Land, and are sworn to maintain the Laws. We ought not that we should plead to this Indictment, for what we did was by an Act of Parliament.*

Court. Pray Sir this must not be let fall without reproof, or rather punishment.

Ca. *I believe there is no president for it.*

Court. Sir, We know the Act of Parliament as well as you and most of the standers by: You go upon a false ground, there was no such Act of the Supreme Authority as you pretend to; these are but Phantasms of your own brain, and must not be suffered; these things have been controverted and decided many a time again and again.

Ca. *I desire to have time to speak how it was begun and carried on, or else how shall I be able to make my defence, or to tell you what are the Heads I will insist upon; I shall declare the grounds upon which the Parliament did proceed.*

L. chief Baron. Mr. *Carew*, If that be your ground, the Parliament did it, the House of *Commons* did it, I have something to offer (not to interrupt you) to the then *Commons* ——

Ca. *In my humble opinion for the maintaining of this, It was by Authority, the Supreme Authority, by which it was done*

L.

L. chief Baron. Did you ſign this Warrant for the ſummoning and warning of that Court? And did you ſign the Warrant for executing the late King.

Ca. *I deſire I may go on with my defence.*

L. chief Baron. We would not have you be miſtaken. You ſeem to confeſs the act, and now you juſtifie it: you cannot ſpeak any thing for your juſtification till you confeſs the fact.

Ca. *I ſhall ſpeak to that in its time.*

L. chief Baron. You muſt ſpeak to that firſt that is matter of Fact; whereupon the Jury are to go.

Ca. *There is matter of Law.*

Court. You muſt ſpeak to matter of Fact firſt.

Ca. *I ſay this is that I was about to ſay, That the Supreme Authority* ——

Court. You muſt ſpeak to the Fact firſt, Whether you did compaſs, &c. the Kings death or not; that is the firſt ground, if you did not, there is an end of the buſineſs: It is proved againſt you that you did it; if you come to juſtifie it, it muſt be when you have firſt agreed the matter of Fact.

Ca. *I deſire I may have liberty to proceed either for matter of Fact, or Law as I ſee fit.*

Court. No, no, you muſt firſt ſpeak to the Fact, you may be after heard. You know in all caſes they muſt begin with the Fact, either denying or extenuating; For matter of Law in this caſe muſt ariſe from the fact.

Ca. *But I humbly conceive there is matter of Law in this caſe and it is matter of Law that is above the juriſdiction of this inferior Court.*

Mr. Soll. *Finch,* I pray that he may be held to the iſſue *Guilty* or *not Guilty*: If he deny the Fact, let us relie upon our Evidence and he upon his, he cannot come to Law till he hath confeſſed the Fact. The queſtion is, Whether you did it or not, there is the Fact; if you have any thing to juſtifie, that follows.

Ca. *I was upon that, and going on to ſhew the reaſons and grounds of it.*

Court. Firſt you muſt confeſs it, if you will ſhew the reaſons why you did it.

Ca. *I told you there was ſome things I did.*

Coun. What are thoſe ſome?

Ca.

Ca. *I do acknowledge that I was there at the Court.*

Coun. Did you sign the Warrants for summoning that Court, and for Execution of the King?

Ca. *Yes, I did sign them both.*

Coun. Then say what you will.

L. chief Baron. Now go on.

Ca. *In the year, 1640. there was a Parliament called according to the Laws and constitutions of this nation, and after that there was some difference between the King and the Parliament, the two Houses of Parliament, Lords and Commons, and thereupon the King did withdraw from the two Houses of Parliament, as appears by their own Declaration,* The great Remonstrance, *printed in 1642. and thereupon the Lords and Commons did declare* ——

L. chief Baron. Mr. *Carew*, The Court are of opinion not to suffer you to go on in this: they say it tends not onely to justifie your act, but you cast in Bones here to make some difference. You talk of the Lords and Commons, you have nothing to do with that business: your authority that you pretend to, was an Act of Parliament (as they called themselves) and that where there was but 46 Commons in the House, and but 26 voted it.

Ca. *I say, That the Lords and Commons by their Declaration* ——

Mr. *J. Foster.* Hold your hand a while Sir, not so fast, you go to raise up those differences which I hope are asleep, new Troubles, to revive those things which by the grace of God are extinct, you are not to be suffered in this; it is not the singling out of a few persons that makes a Parliament. We see as before, so still it is your course to blow the Trumpet of Sedition, Did you ever hear, or can you produce instances of an Act of Parliament made by the House of Commons alone, though this was not the House of Commons, as you heard before.

Ca. *Neither was there ever such a War, or such a president.*

Court. Nor we hope never will be: Pray remember, you were returned to serve in the House; what was that writ that summon'd your appearance? You had no manner of ground in the world to go that way that you did.

Coun. We pray that the Prisoner at the Bar give us patience a little to repeat that to him which your Lordships have been so often troubled with declaring; this is not the first or second time that in this publique Assembly it hath been said, That neither the Lords

nor

nor the Commons, jointly nor severally, have any power at all to proceed upon the Person of the King; That it is not in their power to condemn any man in *England*, without the good pleasure of the King, much less the King himself; and that this is the great Liberty of the people of *England* that it should be so; and it was the first breach and invation of our Liberties that that first Parliament made, and which you justifie in the name of the Lord. In this case to throw us upon Debates of the War, and to talk here of the causes and reasons of that quarrel which ended in such a Tragedie. For this person to come here with this confidence, and to justifie it, but that he knows he cannot be in a worse condition, one would wonder it should fall from any man that hath any regard of himself; it is all one to them that perish, whether they fall by one sin or multitudes. He makes no scruple to multiply Treasons; I do beseech your Lordships he may not offer as he hath begun, but that the Jury may proceed.

Court. All the Court are of the same opinion, not to hear any thing like the former Discourses.

Ca. *I desire I may be heard, I have not compassed the Death of the late King, contrived the death of the King; what I did, I did by Authority.*

Court. That is not to be heard: You have heard what hath bin said to you, There could be no such Authority, neither was nor could be; but you would by a wyre-lace bring it in by this; You have confessed the Fact which must be left to the Jury.

L. Ansley. I think you were present in the House of Commons when that Vote passed for agreement with the King in the Treaty at the *Isle of Wight*, You know the King having condescended to most of the desires of his Parliament; there was a debate in the house, and a conclusion that they were grounds for peace. You know the Lords and Commons did resolve to agree with their King; when that was done that would not satisfie you and other Members of the House; Then you go and contrive new ways; you contrive a new fashioned Parliament, the driving away many Members by power, which you could not do by the Law of the Land; Nay, the Parliament had Declared against that which you pretend is by Authority, is no Authority, for a few of you set up an Arbitrary Parliament of a few of your selves; when you had driven away the rest: This kind of Parlia-

ment

ment gives you the Authority you pretend to? You were saying that the Parliament was called at first the Lords and Commons by the King, according to the ancient Constitution of the Laws; Did such a Parliament give you such Authority as you pretend to, an Act of Parliament, as you call it, which was but an Order of some of the Commons, and but a few of them; you can have no manner of Justification, and therefore your Plea must be over-ruled as yesterday it was in the like Case. You are indicted upon a cleer Act of Parliament of 25. *Edw.* 3. and you defend your self upon pretence of an Act of Parliament which hath been over-ruled as no Act.

Ca. *I am a stranger to many of these things which you have offered, and this is strange: You give evidence sitting as a Judge.*

Lo. *Ch. Bar.* You are mistaken, it is not Evidence; he shews you what Authority that was, an Authority of 26 Members: How is this Evidence? Mr *Carew*, if you have any thing more of Fact go on: If you have nothing but according to this kind of discourse I am commanded to direct the Jury.

Ca. *I am very willing to leave it with the Lord, if you will stop me that I cannot open the true nature of these things that did give me ground of satisfaction in my conscience that I did it from the Lord.*

Mr *Sell.* I do pray for the honour of God and our King, That he may not be suffered to go on in this manner. You have been suffered to speak, you have said but little only Sedition; You pretend a conscience, and the fear of the Lord, when all the world knows you did it against the Law of the Lord, your own conscience, the light of nature, and the Laws of the Land, against the Oaths you have taken of Allegiance and Supremacy.

Ca. *Gentlemen of the Jury, I say I shall leave it with you. This Authority I speak of is right, which was the supream power, it is well known what they were.*

Coun. It is so indeed, many have known what they were.

L. Ch. Bar. Mr *Carew*, you have bin heard what and beyond what was fit to say in your own defence; that which you have said, the heads of it, you see the whole Court hath over-ruled. To suffer you to expatiate against God and the King by Blasphemy, is not to be indured; it is suffering poyson to go about to infect people, but they know now too well the old saying, *In Nomine Domini*, *In the Name of the Lord* all mischiefs have been done, that hath been an old Rule. I must now give directions to the Jury.

Lo. *Ch. Bar.* Gentlemen of the Jury——

Cl. I have desired to speak the words of truth and soberness, but have been hindered.

Lo. Ch. Bar. Gentlemen of the Jury, You see the Prisoner here at the Bar hath been Indicted of Treason, and this was for Compassing and Imagining the death of our Soveraign Lord K. *Charles* the First of blessed Memory. The Indictment sets forth several overt Acts to prove this Imagination, for otherwise it is secret in the heart; the Fact it self, the Treason it self, is the Imagination of the heart: The overt Acts that are laid down in the Indictment to prove this, *That they did consults and meet together how to put the King to death, That they did sit upon him*; And thirdly, *That they did sentence him to death, and afterwards he dyed.* You heard what is proved against the Gentleman, the Prisoner at the Bar, by several Witnesses: His own Confession, That he signed the Warrant for Summoning and Convening that Court together, whereby the King was to be brought to his Tryal; and that he sate at his Sentence, and issued the Warrant for his Execution: You saw that this Gentleman did the Fact, did Compass and Imagine the Kings death. That which you are to try is this issue, being Indicted for *High Treason*, and pleading *not Guilty*; whether this Gentleman that went so far, Sate upon him, Condemned him, Signed the Warrant for his Execution, did not *Compass* and *Imagine* the Kings death? I think you need not stir from the Bar where you are; but I leave that to you.

After a very small time of Consultation by the Jury amongst themselves at the Bar, they agreed in a Verdict. Silence was Commanded.

Clerk, *John Carew*, Hold up thy Hand: Gentlemen of the Jury look upon the Prisoner. How say you? Is he guilty of the horrid Treason whereof he stands Indicted, or not Guilty?

Foreman. Guilty.

Cl. What Goods and Chattels, *&c.*

Jury. None that we know of.

Mr *Scot*'s Tryal on *Friday, October* 12. 1660. At the *Sessions-House* aforenamed.

Clerk. Set *Thomas Scot* to the Bar; (which was accordingly done) *Tho. Scot hold up thy hand.* Those men that have been of the

the last Jury are to try, &c. If you will Challenge all, or any of them; You must Challenge them before they are sworn.

Scot. I desire that those men who have been of the former Jury may not be named. I know my liberty of excepting against my number.

Lo. *Ch. B.* Mr *Scot.* That which you do desire is a thing not right; the Offence with one is not the same with others: I speak not but that the Court will do you all Right; the Court will grant it if you will wave your Challenges; but if you mean those that have been by others challenged, it is against Law.

Scot. I am willing to bring my self upon my Tryal, and I will take the ordinary way of Excepting and Challenging.

Sir *Hen. Wroth*, Sir *Jer. Whitchcote*, *James Hawley*, *Rich. Rider*, *Fra. Beale*, *Chr. Abdy*, *Nicho. Raynton*, *Tho. Winter*, *John Kirke*, *Rich. Abel*, Sir *Tho. Aleyn*, *Abr. Scudamore*, *Ralph Halfall*, *George Tirrey*, *Tho. Swallowe*, *Charles Pickerne*, *Arthur Newman*, *Tho. Blithe*, *William Vincent*, *Rich. Whaley*, were called and challenged.

Thomas Grover, *Edw. Rolfe*, *Tho. Usman*, *William Whitcombe*, *Rich. Cheney*, *Tho. Bide*, *Charles Pitfeild*, *John Smith*, *Thomas Morth*, *Tho. Fruen*, *Henry Twyford*, *Samuel Starnell*, were the Jury sworn.

Clerk. Cryer make Proclamation.

Cryer. O yes! If any man can inform my Lords the Kings Justices, &c.

Clerk. *Tho. Scot* hold up thy hand. You that are sworn of this Jury you shall understand that the Prisoner at the Bar stands Indicted by the name of *Tho. Scot* late of *Westminster* in the County of *Middlesex*, Gent: *For that he, together with* John Lisle, &c.

[Here the Indictment was read.] Unto which Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Tryal hath put himself upon God and the Countrey, which Countrey you are. Now your Charge is to enquire whether, &c.

Mr. *Sol. Gen:* You that are sworn of this Jury, this Inquisition for blood, Royal Blood goes on against the Prisoner at the Bar, he stands Indicted for Compassing, Imagining, and Contriving the death of the late King of blessed Memory: It is laid to his Charge in the Indictment, That he did assemble at *Westminster*, and that he with other persons usurped an Authority of sitting and senten-

cing to death his said late Majesty, and that in consequence and pursuance of that the King came to his death: The treason he stands charged with is the Compassing and Imagining the King's death; The other part of the Indictment are but overt acts that do but evidence and prove the Corruption of his heart, if we prove but some of these overt acts then you must find him guilty, our Evidence against this Gentleman will be thus: We shall call Witnesses to prove his sitting in the Court, sentencing his King, while his King stood a Prisoner at the Bar; the Warrant for Execution of the King directed to certain persons to see Execution done accordingly, was under Hands and Seals; and among those Hands and Seals, the Hand and Seal of the Prisoner at the Bar is one, and then we shall produce to your Lordships Witnesses to shew you with what a hard and impenitent heart this hath been Committed; for he so gloried in the Act, That he desired it might be writ upon his Tombe——

Mr *Nutley*, Mr *Kirke*, Mr *Masterson* and Mr *Clark* sworn.

Coun. Mr *Masterson*, be pleased to tell my Lords and the Jury, if you have seen the Prisoner at the Bar sit in that which they called the *High Court of Justice*.

Mr *M.* My Lords and Gentlemen of the Jury, I saw the Prisoner at the Bar present at the High Court of Justice (as the call'd it) for the Tryal of the late King some days; that is to say, either upon the 22. or 23. days of *Jan.* 1648. but particularly upon the 27th day of that Moneth in the said year, when the Sentence of death was pronounced against his late Majesty. I saw the Prisoner at the Bar present.

Coun. As one of the Judges do you mean?

Mr *Ma.* As one of the Judges sitting upon the Bench.

Scot. *Do you know whereabouts I sate?*

Mr *Ma.* I cannot satisfie you in that; but I saw you sitting upon one of the Benches.

Coun. Mr *Clark*, you hear the question, pray answer what you know touching it.

Mr *Cl.* My Lords, and you Gentlemen of the Jury, I was present in the year 1648. when his late Majesty stood a Prisoner at the Bar in that which they called the *High Court of Justice*; and among other persons there present in that business, I observed Mr

Scot

Scot, the Prisoner at the Bar, to sit as one of the Judges, and particularly upon the 23 and 27th days of *Jan.* in the said year, upon which last day the Court pronounced Judgement upon the late King.

Coun. Did he stand up as assenting to the Sentence?

Mr *Ol.* They all stood up to my apprehension, I know not particularly whether the Prisoner at the Bar did.

Coun. Mr *Kirke*, tell my Lords and the Jury your knowledge in this business touching the Prisoner at the Bar.

Mr *K.* I was present at the Tryals of his late Majesty several days, among the rest of the persons that sate in the Court as Judges, I saw the Prisoner at the Bar, and particularly upon the day of the Sentence, the 27th of *Jan.* 1648. The Court stood up unanimously assenting.

Coun. Shew him the Warrant for Execution.

K: This is his Hand.

Coun. Have you seen his Hand often?

K. Yes Sir, and am well acquainted with it.

George Farrington Sworn.

Coun. Shew Mr *Farrington* the Warrant; Do you know that to be Mr *Scots* Hand-writing.

Mr *Far.* I did not see him write it, but I do verily beleeve it to be his; *I* have often seen his Hand-writing.

Coun. Mr *Nutley* do you know Mr *Scots* hand-writing? Is that Mr *Scot's* writing, the Warrant shewn him?

Mr *Nutley. I* do verily beleeve it is.

Coun. Have you been acquainted with the writing of his name.

Mr *N.* I have seen him write his name, and do verily beleeve it to be his hand.

Coun. Clerk read the Warrant: He read it accordingly.

Coun. That which remains of our Evidence, is to prove his boasting of this vilany; We shall desire you to hear Sir *Theophilus Biddolph*.

Sir *Theo. Biddolph* sworn.

Coun. Pray tell my Lords and the Jury what you have heard the Prisoner say touching this business of putting the King to death.

Sir *Th. Bid.* I did hear him confess that he did sit as on of the Judges of the late King, and that he was so far from repenting of the Act, that he did desire when he dyed, That a Tomb-stone might

might be laid over him with this Inscription, *Here lyes* Thomas Scot *who adjudged to death the late King.*

Coun. Where did he say this?

Sir *T. B.* In the Parliament House.

Coll: *Copley*, Esq; sworn.

Coun. Pray Mr *Copley* tell my Lords what you know of this business.

Mr *Cop.* My Lord, I was one of the Secluded Members; when we were called to sit in the House again, the Prisoner at the Bar, Mr *Thomas Scot* (I think it was the last day that we sate) there being some speaking of the horridness of the Fact; he made a long Harrange about that horrid Act; and he said, *He hoped he should never repent of it*, and desired that when he dyed it might be written upon his Tomb-stone, *Here lies* Thomas Scot, *who adjudged to death the late King.*

Coun. We have done with our Evidence.

Court. Sir *Theophilus Biddolph*, When was it that you heard him speak those words?

Sir *T. B.* To my best remembrance it was in *Richards* Parliament; it was about *January* or *February* was twelve Moneths.

Coun. Was not you a Member for the City of *London* in that Parliament?

Sir *T. B.* Yes.

Coun. Mr *Copley*. When was it that you heard it?

Mr *Cop.* It was in *April* last.

Mr *Soll. Gen.* It was a settled perswasion of his heart, and he thought it fit to be gloried in.

The Lord Mayor Elect Sworn.

Coun. Pray my Lord tell my Lords what you know concerning the Prisoner at the Bar.

Lord *M. Elect.* My Lords I was one of those Secluded Members that were returned again a little before the comming in of His Majesty: Upon the last day of our sitting, Mr *Scot* seeing the House must break, said, *Their Heads must be laid to the Block if there were a new Parliament*; For said you (looking on Mr *Scot*) *I confess I had a hand in the putting the King to death, and I desire all the World may take notice of it, and I desire when I dye it may be written on my Tombe: I do not repent of any thing I have done; if it were to do I could do it again.*

Mr *Soll. Gen.*

Mr *Sol. Gen.* Do it again! He follows his blows home.

William Lenthall Esq; Sworn.

Coun. Mr *Lenthall* pray be pleased to tell my Lords and the Jury what you do remember of any discourse of Mr *Tho. Scots* (the Prisoner at the Bar) tending to the glorying in this Act, or any thing in Justification of that Act.

Mr *Lenth.* My Lords, the last day it was the last instant of time, We were resolving of breaking the House, there was some opposition in it, not very much; The general consent of the House was to Dissolve it; *I* must confess at that time *I* did hear Mr *Scot* much justifie that Act of the death of the King (which truly *I* was much offended at) *I* confess to you upon my Oath touching his Speech of the Inscription upon his Tombe, I did not hear that: Justifying the death of the King he made a long Harrange about, and he sate at the upper end of the Gallery; but these words, *Of having it written upon his Tombe, and to have all the world take notice of it*; I do not remember.

Coun. My Lords, My *Lord Mayor Elect* omitted something; pray let him speak to it.

L. Ma. Elect. My Lords, the Conclusion of his Speech ended thus; *Being it is your pleasure to have it so* (the House Dissolved) *I know not how to hinder it*; *but when that is done I know not where to hide this* hated HEAD *of mine.*

Coun. We desire to hear what the Prisoner will say for himself.

Scot. *I have no certainty from the Witnesses that I was there, but in a wandring way, they know not where I sate, nor my posture.*

Mr *Baker* Sworn.

Coun. We do not call this Witness as material, for we must insist upon it quite through, that after 12. years time it is not possible a Witness should remember where every particular person sate. Pray hear this Witness.

Mr *Baker.* I do perfectly remember, That Mr *Scot* sate two Rowes above Mr. *Bradshaw* on his left hand in that which they called the *High Court of Justice.*

Scot. *As to the Warrant you speak of I know not what it signifies, I desire to know what the nature of it is.*

Coun. The Warrant hath been read, it is not produced against him as a Record; for then it needed not to be proved, but it is produced against him as an evidence in writing under his own hand

that

that he was consenting to the death of the King.

Scot. *They may very much mistake my hand; You speak of words that I should utter in Parliament. I do humbly insist upon it, That I am not to answer, nor they alledge any thing of that nature: It is a high breach of Priviledge.*

Coun. There is no Priviledge of Parliament for Treason. First, some of the words were spoken in *Richards* Parliament, and that you do not owa to be a Parliament; then another thing (a knowa rule in Law) there is no Priviledge of Parliament for Treason.

Scot. *I have heard the Rule, but do not so well understand it, of that spoken in* Richards *Parliament; it will be a nice thing for me to distinguish between that and another Parliament; but thus I think, That Convention of the people ought to have the Priviledge of the Parliament as well as any other. I humbly conceive it was testimony ought not to be given to you; Whatever I say in Parliament, the Priviledge extends to no more then this, that I may be lawfully secured till the Parliament hath been acquainted with it, but not finally concluded till the Parliament have heard it.*

Lord Ch. Bar. You are Indicted for *Compassing* and *Imagining* the death of the King; *I* would have you understand, That in case a man should commit an Act of Treason be it in what place soever, there is no place of Sanctuary for Treason; In case of Felony, if a man be Indicted for Felony in the Parliament House, during the time of Parliament, this is not to be tryed in Parliament, but according to the Rule of Common Law; So in case of Treason, the House of Commons in Parliament doth not try Treasons: That distinction which you make is nothing.

Scot. *I humbly conceive there is such a Priviledge that no man shall ever be called to account for any thing spoken in Parliament, if he be not called to account by the House before any other Member be suffered to speak.*

Lord. Ch. Bar. That is, the House will not determine, but that doth not extend to your Case, you are not charged here criminally for speaking those words that have been testified against you, but for Compassing and Imagining the Kings death, of which there are other Evidences, and this but an Evidence to prove that.

Scot. *My Lord, I never did say these words with that aggravation which is put upon them. I have a great deal of hard measure as to say, I hope I shall never repent, I take God to witness, I have*

often

often, because it was spoken well of by some and ill by others, I have by prayers and tears often sought the Lord, that if there were iniquity in it he would shew it me; I do affirm I did not say so.

Mr. *Baker.* My Lord *I* omitted something, which was this; I had occasion to speak with Mr. *Scot*, whilest *Richard's* Parliament was sitting, and among other discourse insisting upon some things that *Richard* had done, saith he, *I have cut off one Tyrants head, and I hope to cut off another.*

Scot. *My Lord this is but a single witness.*

Mr *Sol. Gen. I* suppose he meant *Richard*; for he was a Tyrant.

Lord Ch. Bar. Speak on Mr *Scot* whatever you have to say.

Scot. *If that be laid aside as an impertinency I have the less to say.*

L. Ch. Bar. The next thing you have to do is to answer to the fact, whether you did it or did it not.

Scot. *I say this, Whatever I did, be it more or less, I did it by the Command and Authority of a Parliamentary Power, I did sit as one of the Judges of the King, and that doth justifie me whatever the nature of the fact was.*

Lo. Ch. Bar. We have had these things alledged before us again and again: The Court are clearly satisfied in themselves that this act could not be done by any Parliamentary power whatsoever. I must tell you what hath been delivered, that there is no power on earth that hath any coercive power over the King, neither single Persons nor a Community, neither the people Collectively nor Representatively. In the next place, that which you offer to be done as by Authority of Parliament, it was done by a few Members of the House of Commons, there was but 46 there at that time, and of these 46 not above 26 that voted it, at that time the House of Lords was sitting, who had rejected it, and without them there was no Parliament, there was a force upon the Parliament, there was excluded seven parts of eight: Supposing you were a full House of Commons, and that without exception, there was not Authority enough, and it is known to you (no man better) that there never was a House of Commons before this time, that this foul Act was made for erecting that High Court of Justice (as you called it) assumed that Authority of making a Law, you cannot pretend to act by Authority of Parliament; and because you would excuse it, you did it by Authority of Parliament,

whether it were good or no. If a man do that which is unlawful by an unlawful Authority; the assuming to do it by that Authority, is an Aggravation, not an Extenuation of the Fact; It was over-ruled, I think my Lords will tell you, That they do not allow of that Authority at all, either to be for Justification or Plea.

Scot. *My Lords I humbly pray leave to say, that without offence to the Court (every person whereof I honour) This Court hath not Cognizance to Declare whether it were a Parliament or no.*

Lo. Ch. Bar. That was objected too, and we must acquaint you, That first of all it is no Derogation to Parliaments; That what is a Statute or not a Statute, should be adjudged by the Common Laws. We have often brought it into question, whether such and such a thing was an Act of Parliament or not, any man may pretend to an Authority of Parliament: If 40. men should meet at *Shooters Hill*, as the *Little Convention* did at *Westminster*, and say, *We do declare our selves a Parliament of England*; because they do so, shall not this be judged what is a Statute and what not? It is every days practise we do judge upon it; the Fact is so known to every body, they did assume to themselves a *Royal Authority*; it hath been over-ruled already, it hath been the mistake of many, the vulgar acceptation of the word Parliament. A Parliament consists of the King, Lords and Commons; it is not the House of Commons alone; and so it is not by Authority of Parliament: It is not unless it be by that Authority which makes up the Parliament: You cannot give one instance, That ever the House of Commons did assume the Kings Authority.

Scot. *I can many, where there was nothing but a House of Commons.*

Court. When was that?

Scot. *In the* Saxons *time.*

Court. You say it was in the *Saxons* time, you do not come to any time within 600. years; you speak of those times wherein things were obscure.

Scot. *I know not but that it might be as lawful for them to make Laws as this late Parliament, being called by the Keepers of the Liberties of* England: *My Lords, I have no seditious design; but to submit to the providence of God.*

Court. This is notorious to every man: This we have already heard and over-ruled.

L. Finch.

L. Finch. That that I hope is this, That Mr *Scot* will contradict that which he hath ſaid before; that is, That he hopes he ſhould not repent, I hope he doth deſire to repent. Mr *Scot*, for this we muſt over-rule it, as we have done before; there is nothing at all to be pleaded to the Juriſdiction, and this point hath been determined before.

Scot. *The Parliament in former times conſiſted not ſo much of King, Lords and Commons, but King and Parliament. In the beginning of the Parliament in* 1641. *the Biſhops were one of the three Eſtates, if it be not properly to be called a Parliament, a legiſlative Power, though it be not a Parliament it is binding; If two Eſtates may take away the third, if the ſecond do not continue to execute their truſt, he that is in occupancy may have a title to the whole: I do affirm I have a Parliamentary Authority, a legiſlative power to juſtifie me.*

Lo. Ch. Bar. Mr *Scot*, what you ſpeak concerning the Lords Spiritual is nothing to your Caſe, be it either one way or other, it was done by an Act of Parliament, with conſent of the King, Lords and Commons, though you will bring it down to make theſe Commons have a legiſlative Power, I told you it was over-ruled before. We have ſuffered you to expatiate into that which was a thing not intended by many of my Lords, that you ſhould have any ſuch power to expatiate into that which is nothing but indeed to make a new Government, which is the higheſt Treaſon next to the Murthering of the King in the world; To ſubvert the Laws, and to make a few of the Commons, nay, if they had been the whole, to make them to have the Legiſlative Power. Mr *Scot* if you have any thing in extenuation of the Fact we ſhall hear you, further we cannot.

L. Finch. If you ſpeak to this purpoſe again, for my part I will profeſs my ſelf, I dare not hear further of it; It is ſo poyſonous blaſphemous a doctrine contrary to the Laws, if you go upon this point I ſhall (and I hope my Lords will be of that opinion too) deſire the Jury may be directed.

Scot. *I thought my Lord you would rather be my Councel, it is not my ſingle opinion, I am not alone in the Caſe, therefore I think I may juſtifie my ſelf in it, it was the Judgement of many of the Secluded Members to owne us to be a Parliament.*

Lord Anneſley: What you ſaid laſt doth occaſion my riſing,

you seem to deliver my opinion, who you know could never agree to what you have alledged; truly I have been heartily sorry to hear the defence you have made to day, because you know I have had Letters from you of another nature; I was very confident to have heard you an humble Penitent this day instead of justifying your self: As to that which you say of the Secluded Members owning you to be a Parliament; they were so far from it, that you know for how many years they lay under sufferings and obscurity, because they could not acknowledge that an Authority which was not so: You cannot forget the Declaration of both Houses that was published upon a Jealousie that the people had they would change the Government of King, Lords & Commons; It was far from their thoughts, it was called in that Declaration *A black scandal cast upon them*: This Declaration you know was by Order of both Houses affixed in all Churches of *England* that people might take notice what they held to be the Fundamental Government of this Kingdom, *King, Lords and Commons*: After this for you to set up another Government, and under them to act such things that one would think should hardly enter into the heart of any man. You know very well all along they declared themselves faithfull Subjects to the King, and so would have lived and dyed; and you might have had your share of the happiness of that peace, if you cou'd have had an Inclination to submit to that which both Houses had resolved, when you and others could not bring your hearts to stoop to your Fellow Subjects, when you could not submit to that equal rule to take your share with them. When Pride carryed some so high, then was the beginning of your fall and others, and none could expect other than what is now come to pass, That they should come to that shame and sorrow that this day hath brought upon you: I could have wished to have heard nothing but an humble confession of the fault that hath been clearly proved, and no Justification of it: You have sworn amongst others to preserve the Laws and People of the Kingdom; but you drove away not only the House of Lords, but most of the Commons, and then to give the name of a Parliament to the Remainder, this is a great aggravation of your Treason. I think we of the Secluded Members could not have discharged our Duty to God and the Kingdome, if we had not then appeared in Parliament to have dissolved that Parliament, and so by our joynt assent

put

put an end to all your pretences, which if we had not done, we had not so soon come to our happiness, nor you to your miseries.

Lo. Ch. Bar. The Court hath told you before their opinions in the thing, and no further debate is to be allowed in this, the Justification of it doth comprehend Treason; We our selves are not by Law to allow the hearing of it. If you have nothing to say for your self I must give direction to the Jury.

Scot. *I humbly crave leave to move the Jury that they bethink themselves, and consider of it rather as a special Verdict then of a definitive one, I think there is cause of a special Verdict.*

Court. If there was need of a special Verdict (We are upon our Oaths) I shou'd give direction to the Jury. What We do, We do upon our Oaths, and must answer it before God Almighty. The Court hath delivered their opinions before, that in this Case the Pretended Authority under which you did derive that Power which you did execute, that it is no Authority, it is void in Law, it is a foundation (if it were true) of subverting all Laws, and indeed of all Religion, a Power that you assumed to your selves of Judging and Condemning your King, that you wou'd countenance such an Authority is a great aggravation of the fault. They are Judges whether you did Imagine or Compass the Kings Death, that is all the Jurors have to do. Gentlemen of the Jury——

Scot. *I would know what particular Law I have transgressed in this thing.*

Court. The Law of Godand Man. 25 *Edw.* 3.

Scot. *I humbly conceive that reaches not to this Case.*

Court To satisfie you in that, the very words of the Statute are, *If any man do Compass or Imagine the Kings Death it is Treason*; The Indictment is, That you did Imagine and Compass the death of the King, if the Fact be proved against you, you are within the Statute.

Scot. *You will not say the King shall be a Traytor if he shall Compass the death of the Queen.*

Court. The Queen is a Subject.

Scot *I am not yet convinced,*

Lo. Ch. Bar. Gentlemen of the Jury——

Scot. *I do plead and claim that I am within the Compass of several Pardons; and desire Counsel in that particular, I do come within the*

Compass

Compass of his Majesties Pardon.

Ld. Ch. Bar. If you had not gone on to matter of Justification, you might have been more heard to this of Pardon; but after a Justification then to come for a Pardon, which implies a confession of Guilt, they are contradictory: I must tell you we are now upon Point of Law, That Proclamation I doubt not but his *Majesty* will inviolably make good; but we are not to judge of that, it is nothing to a legal proceeding: You are now in a Court of *Law*, it is not to be pleaded in a Court of Law; the Kings Pardon in Law must be under his Broad Seal: How far you are under that Proclamation, care will be taken, and what is fitting to be done will be done; but it is nothing in the matter of the Charge to this Jury.

Scot. *I desire Councel touching the Statute of* 25. Edw. 3.

Court. You should have done it before you had confessed the Fact.

Scot. *I may do it in Arrest of Judgment.*

Lo. Ch. Bar. Mr *Scot*, for that of the Kings Proclamation, if you be within the benefit and compass of it, according to his Royal Word and Honour in it, you will have the benefit of it; but it is not a Plea in Law, but it must be a pardon under Seal; whatsoever concerns that Proclamation will be considered: It is nothing to the matter whereupon the Jury are to go.

Lord Chief Baron. Gentlemen of the Jury, you see the Prisoner *Thomas Scot*, stands Indicted for Compassing and Imagining the death of our Dread Soveraign King *Charles* the First of most glorious and blessed memory; He is Indicted for Compassing and Imagining his death, there is the Treason; and what is set afterwards in this Indictment is onely to manifest this Compassing and Imagining, because that being in the heart alone without some overt Act no body can prove it: There are several overt Acts laid in the Indictment; one is, A Trayterous consulting and meeting together how to put the King to death: Then a sitting upon the King as a Prisoner, being before them about his life and death; The third is Sentencing to death, that which followed is, That he was Murthered: If any of these acts should be proved, the Indictment is proved; for the proof, there are several Witnesses have fully proved that he did sit there several times, particularly upon the 27th of *January*, which was the day of the Sentence:

That

That he did ſit there, all of them agree to that; It is true as to the Circumſtance where he ſate; one Gentleman ſaith he ſate in the ſecond Row, on the left hand of *Bradſhaw*; you will remember it is 12. years ago, how any man upon the view, and after ſo long a diſtance of time ſhould be able to remember in what poſture one man was from the reſt, I think neither you nor *I* can remember: Here is one proved to you that he did ſigne that Warrant for Executing the King; he ſaith, *How can another know his Hand?* You ſee what the Witneſſes ſay, they knew it; a man can prove nothing more of another mans Hand, then that unleſs they ſee it written, there is nothing to put upon you but his words: You ſee what words are aggravated againſt Mr *Scot*; Whereas he ſaith, It is a breach of the Priviledges of Parliament; if it were ſo, it is nothing to this Fact; though another man ſhould break the priviledges of Parliament it is nothing to you; but beſides it is not a breach of the priviledge of Parliament. You have heard the Witneſſes what they have ſaid againſt him. Mr *Lenthall* ſwears that he did ſpeak at large fully in owning that buſineſs of the Kings death; The reſt ſwear poſitively to the ſame effect, & that at ſeveral times; What was that? He gloried in it, defended it, & ſaid, *He could wiſh it were Engraven on his Tombe ſtone*; he hath denyed this that the Witneſſes have proved: That which is left to you is, whether upon all this matter that you have heard, Whether the Priſoner at the Bar is Guilty of Compaſſing and Imagining the Kings death; and ſo go together——After a little Conſultation together, they ſettled in their places again.

Clerk. Tho. Scot hold up thy hand. Look upon the Priſoner at the Bar; How ſay you is he Guilty of the Treaſon whereof he ſtands Indicted, or not Guilty?

Jury. Guilty.

Cl. Look to him Keeper.

Cl. You ſay the Priſoner is Guilty, *&c.* and ſo you ſay all.

Jury. Yes.

Cl. Set Mr *Scot* aſide.

Clerk. Set *John Jones* and *Gregory Clement* to the Bar.

Which was done accordingly.

Thereupon the ſaid *Gregory Clement* preferred his Petition to the Court. Indictment read againſt them both.

Lo. Ch. Bar. If you do confeſs your Offence, your Petition will be read.

Clement

Clem. *I do my Lord.*

Lo. Ch. B. Mr *Clement*, if you do confess (that you may understand it) you must when you are called, and when the Jury are to be charged. You must say (if you will have it go by way of Confession) That you Wave your former Plea and confess the Fact.

Clerk. Gregory Clement, you have been Indicted of High Treason, for Compassing and Imagining the death of his late Majesty, and you have pleaded not Guilty: Are you contented to wave that Plea and confess it?

Clem. I do confess my self to be Guilty my Lord.

Clerk. Set him aside.

Clerk. John Jones hold up thy hand. These men that were last called, *&c.* if you will Challenge all or any of them, you must Challenge them when they come to the Book, and before they are sworn.

Jones. *I confess I sate among them some days, but not maliciously contrived the death of the King.*

Coun. He is troubled at the Form, he confesseth the Matter, That he was there sitting in the High Court of Justice. If he will not confess it he knows we can prove his Hand and Seal to that bloody Warrant. He is troubled that he is said to have Traytorously and Maliciously Contrived the Kings death: He that doth these Acts towards it, is by Law responsible as to the Malice.

Jury Sworn.

Sir *Tho. Allen*, Sir *Henry Wroth*, Sir *Jer. Whitchcott*, *James Hawley*, *Henry Mildmay*, *Christ. Ably*, *Nich. Raynton*, *Rich. Cheney*, *Tho. Bide*, *Charles Pitfeild*, *Abraham Scudamore*, *Charls Pickerne*. In all 12.

Cl. Cryer make Proclamation.

Cryer. If any man can inform, *&c.*

Cl. John Jones hold up thy hand. Look upon the Prisoner, *&c.*

Mr *Soll. Gen.* My Lords and Gentlemen of the Jury, I must open to you as to other Juries, that the short Point of this long Indictment is but this, That the Prisoner at the Bar did Imagine and Compass the death of the King, which is your Issue to Try. We shall prove it by those overt acts which the Law doth require. To prove the Sitting, Sentencing and Signing the Warrant for Execution, by the Prisoner at the Bar.

Coun. Call Mr *Clark* and Mr *Carr*, and *Holl. Symson*, who were sworn.

Mr

Mr. *Symſon* did you ſee the Priſoner at the Bar ſitting in that which they called the *High Court of Juſtice.*

Sym. I did ſee Mr *Jones* ſit divers times both there and in the Painted Chamber.

Jones. *I do confeſs I ſate divers times.*

Coun. Did he ſit the day of Sentence?

Sym. I cannot ſay it.

Coun. Mr *Clark* you hear the queſtion; Pray anſwer my Lord.

Clark. My Lords and Gentlemen of the Jury, I was there the 27th of *Jan.* 1648. I ſaw Coll. *Jones* there ſeveral days before; but I did not ſee him that day; his name was called, but I do not know whether he was preſent.

Coun. Mr *Carr* did you ſee him ſit on the 27th day, which was the day of Sentence?

Carr. My Lords he anſwered to his name ſome days, I am not able to tell what day.

Mr *Nutley* Sworn.

Coun. Can you tell whether the Priſoner at the Bar was preſent in that which they called the *High Court of Juſtice.*

Nutley. The Priſoner at the Bar was ſeveral times in the Court which was called the *High Court of Juſtice*; truly I cannot ſay whether he was there the 27th day, the day of the Sentence.

The Warrant for Summoning that Court being ſhewed.

Coun. Is that Mr *Jone's* Hand (the Priſoner at the Bar) ſet to that Warrant?

Nut. I have been acquainted with his Hand, I do beleeve it is.

The Warrant for Execution was alſo ſhewed.

Conn. Is that the ſame Hand-writing?

Nut. Yes I beleeve it is; he hath written ſeveral Letters to me.

Mr *Hartlib* Sworn.

Court. Mr *Hartlib* do you know Mr *Jones* Hand?

Har. I never did ſee him write; but I have ſeen ſeveral Letters out of *Ireland*, and other Papers which have been ſuppoſed to be his Hand-writing: This ſeems to be like that which was reputed to be his Hand.

Coun. Mr *Clark* do you know Mr *Jones* his Hand-writing?

Cl. I have ſeen ſeveral Letters of Coll *Jones*, and theſe are like his Hand-writing; I do beleeve they are his Hand-writing.

Mr *Jones* looks upon them both, and confeſſes they are like his hand-writing.

Cook. We have given our Evidence: What do you say for your self before Charge be given to the Jury?

Jones. *I have little to say, your Lordships have already heard what is to be said in this Case; I have nothing to say to the point; I am not fit to plead any thing, especially in matter of Law: I must wholly put my self upon the Lord, and this Honourable Court and Jury.*

Lo: *Ch. Bar.* Gentlemen of the Jury, here is this Prisoner *John Jones* stands Indicted: for that he with others did Compass and Imagine the Kings death, that is the substance of the Indictment; The Indictment sets forth several Acts, each proving the Compassing and Imagining the Kings death: One of them is, that he did consult and meet together, and propound how the King should be put to death: The second is, they did assume a power to Judge the King; The third is, that they did actually sit upon him; And the last of them is, that they sentenced the King, and afterwards the King was murthered: The whole substance is, whether he did Compass and Imagine the Kings death. If any one of these particulars that are alledged for the overt acts be proved, you are to find the Indictment. He hath confessed very ingenuously, that he did sit upon the King, that he did sit in that Court, and so there is an overt act proved, if nothing else you ought to find him guilty of this Treason. There is further Evidence (though not any Evidence of his sitting the last day of the Sentence) you have had three comparing similitudes of hands to prove that he did sign that Sentence, that horrid Instrument whereby the King was ordered to be put to death; one of them having received Letters from *Ireland*, and others acquainted with his hand, say that it is like his hand; he hath so confessed the likeness of his hand, but he saith he doth not remember he signed it. As to you of the Jury there is no more to be considered, if any one of the acts do appear true to you, that is sufficient to finde him guilty, (though he were not guilty of all) but that he did Compass and Imagine the Kings death is cleer, in sitting, and signing the Warrant; for the other, whether you shall find that he did sentence the King, that must be left to you. Whatsoever it is, still it is the same if any one be proved, you ought to finde him guilty of the Indictment, which is the Compassing and Imagining the King death. I think you need not stir from the Bar; for he hath confessed it.

The

The Jury went together, and after a little Consultation returned to their places.

Clerk. Are you agreed of your Verdict.

Jury. Yes.

Cl. Who shall say for you?

Jury. Our Foreman.

Cl. *John Jones* hold up thy hand. Look upon the Prisoner at the Bar. How say ye is he guilty, *&c.*

Foreman. Guilty.

Cl. Look to him Keeper.

Cl. You say the Prisoner at the Bar is guilty, *&c.* and so you say all.

Jury. Yes.

Cl. Set all that have been tryed this day to the Bar.

Lord *Ch. Bar.* Mr *Scot* I must speak a word to you; you made mention of the Kings Proclamation for pardon, and you did desire the benefit of it. As I told you before, so now again, That it was not proper for us upon that Proclamation to give any allowance by way of Plea, because the Pardon ought to be under the Broad Seal, but God forbid but just and due Consideration should be had of it with honour, so far as you are comprehended within it: Though Judgement shall pass, no Warrant for Execution shall go out against you, till consideration be had how far you are within the Compass of that Proclamation; and the like to you Mr *Scroop.*

Clerk. Adrian Scroop, Hold up thy hand. Thou hast been Indicted of High Treason, and hast thereof been found guilty: What canst thou say for thy self why Judgement should not pass for thee to dye according to Law?

Scroop. *I do humbly submit to his Majesties mercy.*

Cl. *John Carew,* Hold up thy hand. Thou art in the like Condition with the former, what canst thou say, *&c.*

Carew. *I commit my cause unto the Lord.*

Cl. *Thomas Scot,* Hold up thy hand, thou art in the like Condition with the former, what canst thou say, *&c.*

Scot. *I shall onely say, I do onely cast my self upon his Majesty and pray mercy.*

Cl. *John Jones,* Hold up thy hand, thou art in the like Condition with the former, what hast thou to say, *&c.*

Jones. I pray his Majesties Clemency.

Cl. Gregory Clement hold up thy hand; Thou standest Indicted of High Treason; and thereunto hast pleaded Guilty; What canst thou say, *&c.*

Clem. *I pray mercy from the King.*

Lo. Ch. Bar. You that are Prisoners at the Bar: You see the Sentence of death is now to pass against you; and for ought you know, or we know yet, may be nearer then you are aware: How soon it will be executed we know not; when you have reflected upon your own consciences, many of you could not chuse but look there and see, as in a glass, the foulness of this horrid Offence: It is the *Murther of our most gracious Soveraign King* Charles *the First of blessed memory*; a Prince whom we (such of us as had the honour personally to attend him) knew, was of such parts and vertues, if he had been a private man more could not have been desired; truly what he did as a King, his Clemency; how it appeared at first in this Princes time: If you look what Peace and Prosperity we enjoyed in his days, we will not find it in other Kings times; You had not a Noble man put to death save one, and that for an Offence which must not to be named: A Prince that had granted so much: You may remember what was granted before the beginning of these Wars: Grievances complained of, Star-Chamber, High Commission Court; Ship money; The *Claim* of Stannery, *&c.* All these were taken away; What Concessions he made after in the *Isle of Wight*; how much he wooed and courted the people for Peace. I urge this unto you only that you would lay it to your hearts, that you would consider what it is to *Kill a King*, and to kill such a King. If any of you shall say That we had no hand in the actual Murther of the King, remember that they that brought him to the Bar, were all one as if they had brought him to the Block, as St. *Paul* confessed (though he held but the Clothes, he killed the Martyr *Stephen*. You are shortly to appear before Gods Tribunal, and I beseech God Almighty that he will give you, and us all, those hearts, that we may look into our selves; No figge leaves will serve the turn; whatsoever you have said now as Prisoners, or allowed to say for your own preservation in point of Fact, *Notwithstanding* it will not serve before God Almighty: All things are naked before him, Lay it to your hearts: God Almighty though you have committed that foul

foul and horrid ſins; yet he can pardon you, as he pardoned that murther of *David*: *I* ſpeak it to you, that you may lay it to your hearts; *I* am heartily ſorry in reſpect you are Perſons of great Civility and (thoſe that *I* know) of very good parts; and this *I* muſt ſay, That you will conſider with your ſelves, if any of you have been led away, though it were with his own conſcience; if any of you did it as you conceived in conſcience, remember that our Saviour ſaith, *The time ſhall come when they will perſecute you and kill you, and think they do God good ſervice.* *I* have the Judgement of Charity, poſſibly ſome of you did it in this kind, and this is leſs then doing it wilfully; others might do it by a miſ guided Conſcience; there is a ſpiritual pride, men may over-run themſelves by their own holineſs, and they may go by pretended Revelations: Men may ſay *I* have prayed about ſuch a thing, *I* do not ſpeak it with reproach to any; *If* a man that ſhould commit a Robbery or Murther, meerly becauſe he will, and ſhould come and ſay, *I* have prayed againſt it, and cannot underſtand it to be a ſin, as on one in *Shropſhire* did, and yet notwithſtanding, killed his own Father and Mother; try your own ſpirits, you muſt not think that every Fancy and Imagination is conſcience; Men may have a ſtrange fancy and preſumption, and that they may call conſcience: Take heed, there is a ſpiritual pride; the Devil doth many times appear like an Angel of light, do not reſt upon that ſelf-confidence: Examine your hearts, conſider the Fact by the word of God; That is the Rule, the Law is to be applyed to it; *Eccleſ.* 8. *Where the word of a King is, there is power; and who can ſay unto him, What doſt thou*, that is to ſhew the power of Kings in Scripture: Remember withal that of *David* in *Pſalm* 51. that penitential *Pſalm*, when he had committed that horrid ſin againſt *Uriah*; Remember what he ſaid being a King; *Tibi ſoli peccavi, Againſt thee on'y have I ſinned*; Truly it being in ſuch a Caſe, *I* ſpeak it as before God Almighty, according to my duty and conſcience; *I* wiſh moſt heartily as to your Perſons: *I* pray God to give you that grace, that you may ſeriouſly conſider it, and lay it to heart, and to have mercy vpon you, and to forgive you; And this is all that *I* have to ſay; and now not *I*, but the Sentence of the Law, the Judgement which *I* have to give againſt you is this, *You Priſoners at the Bar, the Judgement of the Court is, and the Court doth award, that you be led back*, &c. And the Lord have mercy on your Souls.

Clerk.

Clerk. Cryer make Proclamation.

Cryer. O Yes, *&c.* All manner of Perſons, *&c.* Jurors and Witneſſes to appear to morrow morning at ſeven of the Clock at this place; So *God ſave His Majeſty.*

Seſſions-Houſe Old-Bayly, Octo. 14. 1660.

The Court being Aſſembled, Proclamation was made.

Clerk of the Court. Set *Cook*, *Peters*, *Hacker* and *Axtel*, to the Bar: They being brought the Keeper was afterwards ordered to take back all except Mr *Cook*.

Cl. John Cook hold up thy hand, *&c.*

Jury. Sir *J. Whitchcott*, *James Hawley*, *Jo. Nichol* of *Henden*, *Tho. Nichol*, *F. Thorn*, *Edw. Wilford*, *Wil. Gumbleton*, *Jo. Shelbury*, *Tho. Jenney*, *Tho. Willes*, Sir *H. Wroth*, *Rich. Cheney*, of the Jury called and ſworn.

Mr Cook: *May it pleaſe your Lordſhip, I do not know any of theſe Perſons; I beſeech your Lordſhip that in regard the ſafety of my life depends upon the Indifferency of theſe perſons, that your Lordſhip may demand of the Sheriff to know whether he hath not heard them ſay, or any of them, that they are preingaged, I hope they are not, and thereupon I have not challenged any.*

Lo. Ch. Bar. Sir, The Officer reads their names out of his Papers, I ſuppoſe he doth not pick and chuſe them; I would not have him, and *I* am ſure he will not do you any wrong in that particular.

Cook. *My Lord I am ſatisfied.*

Cl. If any man can inform, *&c.*

Cl. J. Cook hold up thy hand.

Cook. *My Lords, I deſire Pen, Ink and Paper.*

Lo. Ch. Bar. Give it him.

Cl. J. C. Hold up thy hand. You that are ſworn look upon the Priſoner: You ſhall underſtand, *&c.* (Here the *Indictment* was read as before.)

Mr *Soll. Gen.* May it pleaſe your Lordſhips, and you Gentlemen that are ſworn of this Jury, the Priſoner at the Bar ſtands *Indicted* for High Treaſon for Compaſſing and *Imagining* the Death of the Late King of Bleſſed Memory: The *Indictment* ſets forth, That he, together with others, did aſſemble at *Weſt-*

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minſter Hall; and ſets forth many other particulars of ſitting, ſentencing, and of the conſequent Death and Murther of the King. The matter and charge of the Indictment is for Compaſſing and Imagining the Death of the King, the reſt of the Circumſtances of the Indictment are but alledged as overt acts to prove the Imagination, which only is the Treaſon. This Priſoner at the Bar ſtands here Indicted for this Treaſon of Compaſſing and Imagining the late Kings Death. My Lord, his part and portion in this matter will be different from thoſe that have been tryed before you, they ſate as Judges to ſentence the King, and he, my Lord, ſtood as a wicked Inſtrument of that matter at the Bar, and there he doth with his own hand ſubſcribe and exhibite a charge of High Treaſon, a ſcandalous Libel againſt our Soveraign to that pretended Court to be read againſt him as an accuſation in the name of all the people of *England*; when he had done that, he makes large diſcourſes and aggravations to prove (if it had been poſſible) innocency it ſelf to be Treaſon: When he had done, he would not ſuffer his Majeſty to ſpeak in his defence, but ſtill took him up, and ſaid, that he did ſpin out delays, and deſired that the Charge might be taken as if he had confeſſed it: He preſſed the Court that Judgement might be given againſt the King; he was the man that did demand that wicked Judgement before the Court pronounced it; and he was the man that did againſt his own Conſcience, after he had acknowledged that he was a wiſe and gracious King, yet ſays he, *That he muſt dye and Monarchy with him*, there in truth was the Treaſon, and the cauſe of that fatal blow that fell upon the King: This was his part to carry on; how he did it as a wicked Counſellour we ſhall prove to you, and the wages and reward of the Iniquity that he did receive.

James Nutley ſworn.

Counſel. Pray tell the Circumſtances of the Priſoners Proceedings at *Weſtminſter* Hall, when he did exhibite a Charge againſt the King.

Mr *Nutley.* My Lords, the firſt day of bringing his Majeſty to his Tryal, was *Saturday, Jan.* 20. 1648. Before they ſate in publick, they that were of the Committee of that which they called the *High Court of Juſtice*, did meet in the Painted Chamber, which was in the forenoon of that day. Being there I did obſerve that there was one *Price* a Scrivener that was writing of a Charge; I ſtood at a great diſtance and ſaw him write, and I ſaw this Gentle-

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man the Prisoner at the Bar near thereabouts where it was writing I think it was at the Court of Wards. This Charge afterwards (a Parchment Writing) I did see in the hands of this Gentleman the Prisoner at the Bar. A very little after that they called their names they did adjourn from the Painted Chamber into *Westminster* Hall, the great Hall. The Method that they observed, the first thing was to call the Commissioners by name in the Act; the pretended Act for trying the King was read; that is, when the Court was sate, the Commissioners were called by names, and as I remember they stood up as their names were called: The next thing was reading the Act for the trying of his late Majesty. After that was read, then this Gentleman, the Prisoner at the Bar, presented the Parchment Writing, which was called the *Impeachment* or Charge against his *Majesty*: Mr *Bradshaw* was then President of that Court, and so called Lord President; he commanded that the Prisoner should be sent for, saying, *Serjeant* Dendy *send for your Prisoner*; thereupon the King was brought up as a Prisoner, and put within a Bar: And when the Court was silenced and setled, this Gentleman the Prisoner at the Bar did deliver the Charge, the Impeachment to the Court, and it was read: The King was demanded to plead to it presently. Here I should first tell you, that upon the Kings first comming in there was a kinde of a Speech made by Mr *Bradshaw* to the King in this manner, I think I shall repeat the very words, Charles Stuart *King of* England, *the Commons of* England *assembled in Parliament taking notice of the effusion of blood in the Land, which is fixed on you as the Author of it, and whereof you are guilty, have resolved to bring you to a tryal and Judgement, and for this cause this Tribunal is erected*: There was little reverence given to his Majesty then, which *I* was troubled at; he added this further, *That there was a charge to be exhibited against him by the Sollicitor General*; I think this *Gentleman* was so called at that time, and he called to him to exhibit the Charge; and this *Gentleman*, (the Prisoner at the Bar) did deliver an Impeachment, a Parchment writing, which was called a Charge against the King at that time, which was received and read against him.

Coun. Did you ever see the Charge (which was now shewn to Mr *Nutley*)

Mr *Nut.* My Lords *I* do beleeve that this is the very Charge, I am confident it is the same writing; *I* have often seen him write, and by the Character of his hand this is the same.

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Counsel. Go on with your storie.

Mr. Nutly. My Lords immediately upon the delivery of this Charge of Impeachment which was delivered in the Kings presence, after it was read the King was demanded to give an answer to it. His Majestie desired to speak some thing before he did answer to the Pretended Impeachment (for so his Majesty was pleased to call it) He did use words to this purpose, saith he, I do wonder for what cause you do convene me here before you: he looked about him, saith he, I see no Lords here, where are the Lords? upon this Mr. *Bradshaw* the President, for so he was called, did interrupt his Majesty, and told him, *Sir*, saith he, you must attend the business of the Court; to that purpose you are brought hither, and you must give a positive answer to the Charge: saith the King, you will hear me to speak, I have something to say before I answer: after much adoe, he was permitted to go on in the discourse that he was in, so far as they pleased. His Majestie said, I was in the Isle of *Wight*, and there I was treated with by divers honorable persons, Lords and Commons, a treaty of peace between me and my people, the treaty was so far proceeded in that it was near a perfection: truly (saith he) I must needs say, they treated with me honorably, and uprightly; and when the business was come almost to an end, then (saith he) was I hurried away from them hither, I know not by what Authority now I desire to know by what Authority I was called to this place: that is the first question I shall ask you before I answer the charge. It was told him by Mr. *Bradshaw* the President, that the Authority that called him hither was a lawful Authority: he asked him what Authority it was, the second time: it was answered him by the President, that it was the Authority of the Commons of *England* assembled in Parliament, which he affirmed then to be the Supream Authority of this Nation: the King said, I do not acknowledge its Authority: Authority if taken in the best sence, it must be of necessity understood to be lawful; therefore I cannot assent to that: I am under a Power, but not under an Authority: and there are many unlawful Powers: a Power that is on the high way, I think I am under a Power, but not under an Authority: you cannot Judge me by the Lawes of the Land, nor the meanest Subject. I wonder you will take the boldness to impeach me your Lawfull King. To this purpose His *Majestie* was pleased to express himself at that time, with more words to that purpose. The King went on to further discourse concerning the Ju-

jurisdiction of the Court. *Bradshaw* the President was pleased to interrupt him, and told him several times, that he trifled out the Courts time, and they ought not to indure to have their Jurisdiction so much as questioned.

Court. Pray go on.

Mr. Nutly. This Gentleman at the Bar, I did hear him demand the Kings answer several times: a positive answer was required of the King: the King often desired to be heard, and he interrupted him again and again, several times; and at length it was pray'd that the charge that was exhibited against him might be taken *pro Confesso*.

Court. By whom?

Nutly. By the Prisoner at the Bar, if so be that he would not answer. This my Lord is the substance of what I have to say against him.

Counsel. Mr. *Nutly*, pray, what discourse have you had at any time, with the Prisoner at the Bar, concerning this impeachment?

Nutly. Truly my Lord, I knew the Gentleman well, I was well acquainted with him; and for the satisfaction of my own conscience (for I was verie tender in the business, and sorrie he was ingaged in it) I went to him and did desire him to desist; I had discourse with him (for I was then a young Student in the Temple, and had a little knowledge in the Lawes:) I desired him to consider the dangerous consequences of such a proceeding; I may say I did it with tears in my eyes, for I had a very good respect to the Gentleman for his Profession sake, being learned therein: truly my Lord he did answer me thus: *I acknowledge it is a very base business but they put it upon me*, I *cannot avoid it, you see they put it upon me.* I had some discourse with him concerning the oath of Allegiance: truly he was satisfied that this oath was against the business in question; I saw he was troubled at it.

Counsel. Can ye speak of the manner of calling for Judgement against the King?

Nutly. That (I have already answered to it) was several times done; the King was brought several times to the Bar, and at every time he was brought, he was pressed to answer whether Guilty, or not guilty.

Court. By whom?

Nutly. By the Sollicitor, then, the Prisoner now at the Bar. My Lord, I remember his Majesty was pleased, when he saw he could not be

be heard to the discourse that he did intend to make of the whole businesse; saith the King, if you will needs presse me to an answer, I must demur to your Jurisdiction: my Lord, the answer that was given to that was this, Mr. *Bradshaw* there then President did say, Sir, saith he, if you demur to the Jurisdiction of this Court, I must let you know that the Court doth over-rule your demurrer; this was said my Lord, and Judgement was pressed very often.

Court, By whom?

Nutly, By the prisoner at the Bar.

Cook, My Lord, may I aske him a question?

Court, Yes.

Cook, The first question is, whether the Parchment was delivered by me unto the Court, or brought into the Court by Mr. *Broughton*, the Clerk.

Mr *Nutly*, I do encline to believe (my Lord) That it was brought into the Court, and delivered by some hand or other, to the Prisoner at the Bar, I do believe it was, for I doe remember it was written by one *Price*; I was told that was his name: that may be true, I believe it was brought into the Court and delivered to the Prisoner now at the Bar.

Counsil, But did he exhibit it?

Nutly, Yes my Lords.

Cook, Did you see me setm y hand to that Parchment?

Nutly, No my Lords, but I believe it to be his hand.

Cook, Another Q: whether Mr. *Nutly* did hear me say concerning the opinions of those Gentlemen, what they intended to doe in that businesse?

Nut. My Lord, I doe remember that I had often conference with the Gentleman at the Bar.

I desired him to desist from the business, considering the dangerous consequences of it: truly my Lord, I doe well remember that he did say he did hope they did not intend to take awa the Kings life: said I, if they go about any such thing, doe you use your utmost endeavour to preserve his life: saith he, I did labour to that purpose, but they tell me, they onely intend to bring him to submit to the Parliament.

Cook, It is said that I demanded Judgement of his life, Mr. *Nutly*, I demand of you, whether I used the words of Judgement against his life, but onely I demanded their Judgement.

Nutly. My Lords, for that, I cannot remember possibly to a syllable, but Judgement was demanded.

Court, By whom?

N. By this person.

Cook, I said the judgement of the Court, not against him, I meant judgement for his acquitall.

Court, Did you ever hear him desire the Court that the Charge might be taken *pro confesso*?

Nutly, That I have said my Lord, it was urged by the Prisoner at the Bar against his Majestie, That if he would not plead to the Charge, that then the matter charged in it might be taken *pro confesso.* But my Lord, if you please to give me leave to adde this one word more, my Lord, *I* did hear him say at that time; he shewed me a paper that contained an order of the Court that did direct the very words that he should use when he came to deliver the Charge, whether those words were in the order doe not know.

Cook, Whether I was not directed by those Gentlemen the very words I should speak?

Court, We are satisfied in that; he saith by an order, that you shewed him, you were so directed. If you have any thing more, ask it him.

Mr. *Farrington* sworn.

Mr. *Sol. Gen.* Pray tell my Lords and the Jury, what was the carriage of the Prisoner at the Bar, at *Westminster*, at the place they called the High Court of Justice.

Farrington, My Lord, I was present about the 20th of *January* 1648. at that which they called the High Court of Justice, and Mr. *Bradshaw* sat then as President, so much as I remember concerning the Prisoner at the Bar, I shall acquaint your Lordship. This Gentleman at the Bar, after the reading of the Commissions, and directions by the President, to bring his Majestie (the prisoner he called him) to the Bar; the King being brought, after silence made, and some Speeches made by the President, this Gentleman the Prisoner at the Bar having then a Parchment in his hand, the substance of it was for levying War against the Kingdome, he prayed that it might be read and accepted as a Charge in behalf of the good people of *England.* It was accordingly read, and afterwards being demanded

manded to answer, after his Majesty having given several reasons as to the Jurisdiction of the Court, four dayes, every day the Prisoner at the Bar demanded the judgement of the Court. And if his Majesty would not answer to the charge, it might be taken *pro confesso*.

Councel. Do you know his hand if you see it?

Farrington. I have not seen his hand a long time, then the Impeachment was shewn to the witness.

Farrington. Truly Sir, this is like his hand.

Councel. Do you believe it?

Farrington. It is very like it, I do not know positively.

Councel. Did you hear the words *pro confesso*?

Farrington. Yes my Lord, several times after the first day.

Councel. Did he interrupt the King in his discourse, as to say these words, that the charge might be taken *pro confesso*?

Farrington. I do remember one day there was some interruption between the King and him, the King laying his Cane upon his shoulder desiring him to forbear.

Cook. You cannot say that I interrupted his Majesty.

Farrington. I remember that the King laid his Cane upon your shoulders.

Cook. Whether did *I* the first, or the last day demand judgement, or that any thing might be taken *pro confesso*?

Farrington. The first day? no, but after the first day he did several dayes, you did the last day.

Griffith Bodurdo Esq; Sworn.

Councel. Sir, you have heard the question, give an accompt to my Lords, and Gentlemen of the Jury, of the carriage of the Prisoner at the Bar towards his Majesty during the time of the Tryal.

Mr. *Bod.* My Lord, I was all the time that the King was brought there before the Court, as a Prisoner, *I* was present all the day, having a conveniency out of My house into a Gallery, that was some part of it over that Court. I do remember that the Prisoner at the Bar (whom I never saw before that time) did exhibit a charge

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the first day against the Prisoner at the Bar, which was the King, in these very terms, *The Prisoner at the Bar*: the charge I heard it read, then; I have not seen it since; the substance was this. That for levying war against the Parliament and People of *England*, and namely at such and such a place killing of the people of *England*, (I think *Naseby*, and *Keinton* field was named in it, and divers other places were named in the Charge) and the Conclusion was that he had done those things as a Tyrant, Traitor, Murtherer, and a publick and implacable Enemy of the *Commonwealth*. But this Prisoner at the Bar did exhibit the Charge, and the King did then, as you have heard, he did plead to the Jurisdiction of the Court. The King would fain have been heard, but I think they did adjourn for that time. The next day he pleaded the same thing, I remember the Answer that was several times given; twice given by *Bradshaw* to the King: thus, *that the Court did assert their own Jurisdiction*. The second and third day, I do not remember any day after the first, but that the prisoner at the Bar did demand judgement for the Kings not pleading, and did several times make complaints to the Court of the Kings delayes, that he intended delayes and nothing else.

Cook. Pray my Lord, one Question, whether, my Lord, before he heard me speak of demanding judgement against the King whether he did not hear Mr. *Bradshaw* several times say that the Court owned their Authority, and that the matter would be taken *pro confesso*?

Mr. *Bodurdo.* I did hear the Prisoner at the Bar desire of the Court, that it might be so; and I heard the Prisoner tell the King that it must be so.

Joseph Herne Sworn.

Counsel. Mr. Herne, tell my Lords, what you know of the Prisoners carriage at the High Court of *Justice*, as they called it.

Mr. Herne. Upon Saturday the 20 of *January* 1648. it was the first day His *Majestie* was convened before them.

I could not come near the Court; onely I saw him at a distance I heard nothing, but the acclamations of the people crying out, *God save your Majesty*: what was done in the Court I know nothing of. On *Munday* I was there, & had a conveniency to see & hear what was there acted; and so His Majestie being come to the

Seat

Seat appointed for him, the Prisoner at the Bar being called upon by the then President *Bradsh.* he demanded of him what he had to ask of the Court, He was then talking with *Dorislaus*, and seemed not to mind the businesse of the Court. His Majestie sitting near, takes his stick and thrusts the Prisoner at the Bar upon his shoulder; and the Prisoner looking back with a great deal of indignation turned about. I did hear *Bradshaw* speaking to him in these words, Mr. *Sol.* have you any thing to demand of the Court? whereupon the Prisoner at the Bar did use these or the like words: May it please your Lordships I have formerly in the name of the Commons assembled in Parliament and the good people of *England* exhibited a Charge of High Treason and other high crimes against *Charles Stuart* the Prisoner at the Bar, flinging his head back in this manner to him. He had there further to require of the Court that he might be demanded to make positive answer, by confession or denial; if not, that the Court would take it *pro confesso*, and proceed according to Justice: this was on the first day I was in the Court. The President *Bradshaw* told His Majestie, that he heard what was craved in the name of the Commons assembled in Parliament and the good people of *Eng. and* against him by the now Prisoner at the Bar. The King stood up, but *Bradshaw* prevented him in what he had to say, telling of him that the Court had given him time to that day to know when he would plead to the Charge. His Majestie proceeded to object against the Jurisdiction, and said he did demur to the Jurisdiction of the Court; upon which the President answered him, If you do demur to the Jurisdiction of the Court, you must know that the Court hath overruled your demurrer, and you must plead to your Charge, guilty or not guilty: upon that the King asked their authority, and desired he might give reasons against it; he was denyed it by the President, the President at last was content to tell him, that though he was not satisfied with their authority, they were, and he must: but to satisfie him, he told him in short, they sat there by the supream authority of the Nation, the Commons assembled in Parliament, by whom his Ancestors ever were, and to whom he was accomptable; then the King stood up, by your favour shew me one President. *Bradshaw* sits down in an angry manner, Sir, saith he, we sit not here to answer your Questions, Plead to your Charge guilty or not guilty: Clerk do your duty; whereupon *Broughton* stood up and asked what he had to say, whether guilty or not guilty: and President *Bradshaw* said

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that if he would not plead, they must record his contempt. His Majestie turned about to the people, and said, than remember that the King of *England* suffers, being not permitted to give his reasons for the liberty of the people: with that a great shout came from the people, crying, *God save the King*: but there was an awe upon them, that they could not express themselves as they would have done I believe.

Council. What did *Cook* say to the Judgement, did you hear him presse for Judgement?

Mr. *Hern.* Yes, I heard these words from the Prisoner at the Bar, That if the King would not plead, his Charge might be taken *pro Confesso*, and that the Court might proceed according to Justice.

Cook. One question more, whether he often heard me speak these words, that it might be taken *pro Confesso*, and to proceed according to Justice.

Mr. *Hern.* You desired he might be held to his Plea, confession or denial, that he might not be suffered to use any words to the Jurisdiction of the Court.

Cook. Whether he heard the Charge read?

Hern. I did not hear the Charge read, I was not there the first day. I heard you confesse you had exhibited a Charge of High Treason against the Prisoner at the Bar, which was then the King's Majestie.

Cook. Whether I did not in the Charge conclude, that all proceedings might be according to Justice.

Court. Read the Title and last Article of that Charge, which was accordingly read, and followes in *hac verba*.

The Title of the Charge.

The Charge of the Commons of England *against* Charles Stewart *KING of* England, *of High Treason, and other high Crimes exhibited to the High Court of Iustice.*

The last Clause in the Charge.

And the said *John Cook* by protestation (saving on the behalf of the people of *England* the liberty of exhibiting at any time hereafter any

any other Charge against the said *Charles Stewart*, and also of replying to the answers which the said *Charles Stewart* shall make to the premisses, or any of them, or any other Charge that shall be so exhibited) doth for the said Treasons and Crimes on the behalf of the said people of *England* impeach the said *Charles Stewart* as a Tyrant, Traytor, Murderer, publick and implacable enemy to the Commonwealth of *England*, and prayeth that the said *Charles Stewart* King of *England*, may be put to answer all and every the premisses, that such proceedings, examinations, tryalls, sentences and Judgment, may be hereupon had as shall be agreeable to Justice.

Court. Mr. *Cook*, will you have any Witnesses examined touching the question you last asked?

Cook. No, be pleased to go on.

Mr. *Baker Sworn.*

Mr. *Bak.* My Lords & Gentlemen of the Jury, I was at the High Court of Justice, as they called it, the first, second & third daies not to trouble you with the proceedings of *Bradsham*, I will tell you what I observed of this Gentleman, I have the notes that I took there, and pray that I may read them to help my memory, which was granted, and then proceeded in this manner, That day my Lord, Mr. *Cook* told the Court that he charged the Prisoner at the Bar (meaning the KING) with Treason and high misdemeanors, and desired that the Charge might be read: the Charge was this. That he had upheld a Tyrannical Government, &c. and for that cause was adjudged to be a Tyrant, &c, and did then presse that the Prisoner might give answer to that: and that very earnestly. The second day, my Lord, he told the Court that he did the last day exhibit a Charge of High Treason against the Prisoner at the Bar, (meaning the *King*) and that he did desire he might make answer to it, and he told them also, that instead of making an answer to the Court, the *King* had delayed the Court, but desired the *King* might make a positive answer, or otherwise that it might be taken *pro confesso*. The third day my Lord, he came and told the Court as before, that the *King* had delayed them, and then he charged him with the Highest Treasons and Crimes that ever were acted upon the Theatre of *England*, and then pressed that Judgement might be given against him; and

another expreſſion was, that it was not ſo much He, but the Innocent and precious bloud that was ſhed, that did crie for Judgement againſt the Priſoner at the Bar: this my Lord, in ſubſtance; there were other paſſages.

Cook. Whether before this time he had not heard ſomething of an Act or Order proclaimed at *Weſtminſter*, whether there was any other word in effect uſed in that charge more then in the Proclamation?

Mr. Baker. I did hear of the Proclamation and Charge, and the ſubſtance of it, I have given an accompt of it, and I did hear you preſſe upon it very much: the Proclamation I heard of it that it was made for the ſummoning of the Court, but I did not hear the Proclamation made.

Cook. That that was called the Act of the Commons for Trying of the King?

Mr. Baker. I did hear of the Act, but did not take notice of it.

Mr. George Maſterſon Sworn.

Counc. Mr. Maſterſon, pray inform my Lords and the Jury what you know touching the carriage of the Priſoner at the Bar, at the Tryal of his late Majeſtie.

Mr. Maſterſon. My Lords, and you Gentlemen of the Jury, I was preſent in that they called the High Court of Juſtice upon the 22, 23, and 27. dayes of *January*, in the year 1648. I ſhall wave thoſe circumſtances which you have heard, and many of which I well remember, and what I heard likewiſe between the King, who was then a Priſoner, and the then Preſident *Bradſhaw*; But concerning the Priſoner at the Bar, this I very well remember, that upon Munday I heard him ſay he had exhibited a Charge of High Treaſon againſt the Priſoner (then the *King*) and demanded how that he might plead to his charge, I do very well remember that after ſome paſſages between the King and the Court, the Priſoner at the Bar deſired the King might plead to his Charge, or elſe it might be taken *pro Confeſſo*: I remember upon the laſt day, the day of that fatal Sentence, I heard the Priſoner at the Bar demand in the name of the Commons aſſembled in Parliament, and all the good people of *England*, Judgement upon the Priſoner at the Bar pointing to the King; *this is all.*

Mr. *Burden*

Mr. *Burden* sworn.

Counsel. Do you know who did examine the witnesses against the King, and were you examined and by whom?

Burden. By Judge *Cook*, for so he was called in *Ireland*.

Counsel. Did he examine you as a witness against the King, did he give you an Oath?

Burden. Yes, my Lord, and many others.

Cook. This is a new thing, I never heard of this before, where was it that *I* examined him? *I* had no power.

Counsel. No, we know that, but you were active.

Court. Where was it?

Cook. Whether there was not any others with me in the Room, and where it was?

Burden. It was at *Westminster-hall* within the high Court of Justice.

Cook. Who was there besides me?

Burden. *I* cannot tell, *Axtel* he was there, and *I* am sure *Cook* was there.

Counsel. Mr. *Burden*, Pray tell my Lord and the Jury what questions you were examined upon, and what they tended too.

Burden. He examined me and gave me my Oath, there was eight or nine of us, we had been in the Kings Army in former times, this Gentleman (Col. *Axtel* brought us in, commanded us out of our Company, *I* was in his Company, and this Gentleman) himself gave us our Oaths, he asked us where we saw the King in action. *I* did reply to him, and told him I saw him in the Field with his Army; he asked me many other questions that *I* could not tell him, he asked me, whether *I* did see the King at *Nottingham* set up his Standard, and I was never at *Nottingham* in my life, these were the questions.

Mr. *Starkey* Sworn.

Court. Pray inform my Lords and Gentlemen of the Jury what passed between you and the Prisoner at the Bar, concerning the Trial of his late Majesty.

Mr. Starkey. My Lords, this Gentleman now Prisoner, and my

self have been acquainted a great while, being of the same Society of *Grayes-Inne*, and truly my Lord, I confesse I owe all my knowledge in the Laws to that Gentleman, when I came first he was accused for debt, and was pleased to do me, and several other Gentlemen now and then the favour to reason the Law with us, and assist us in the beginning of the long Parliament, that is, to give you an accompt of his being indebted, he did desire *I* would do my endeavour to get his Protection. Neer the time of the Kings Triall there was a Gentleman with my self, one *Samuel Palmer* of *Grayes-Inne*, which frequented his Company, had several nights the opportunity of understanding the affairs at *Westminster* and truly he himself did seem to us to count that a very ridiculous Councel, *I* remember what he said one night, I think they are all mad, which was within two or three dayes before the Kings trial, and instanced how a Fellow cryed out to the Lord *Fairfax*, that if he did not consent to the proceedings, he would kill Christ and him. After that I did not think he did go to this Councel for imployment, but out of curiosity: when the King came to Tryal, we heard that Mr. *Cook*, was the person that was Solicitor, and Acted that part that you have heard of, and that during that Tryal, whether the second or third day, I cannot say that certainly, Mr. *Cook* came to *Grayes-Inne* that evening about ten or eleven of the clock at night, onely upon some particular occasion as he said, I being walking in the Court before my Chamber in the walk before my Chamber with another Gentleman, I did see him pass out of a house to go back again, I thought it was he, called after him; Master *Cook* said I, upon that he turned back and met me, I took him by the hand, said I, I hear you are up to the eares in this businesse, no saith he, *I am serving the People*, truly said I, I believe there is a thousand to one will not give you thanks, said I, I hear you charge the King for the levying war against the Parliament, how can you rationally do this, when you have pulled out the Parliament to make way to his Triall? he answered me, *you will see strange things, and you must wait upon God*, I did ask him, but first he said this of himself, said, he *was a gracious and wise a Prince as any was in the world*, which made me reflect upon him again and asked how he could presse those things as I have heard? what answer he made to that, I cannot tell, *I* did by the way inquire what he thought concerning the King, whether he must suffer or no, he told me *he must die & Monarchy must die with him.*

Cook,

Cook. Whether was this after or before the Sentence?

Mr. *Starky.* It was before the Sentence, for it was either the Second or third Trial, or rather in some interim of time before the Sentence, for there was an adjournment for a day or two, but I am sure it was before the Sentence.

Court. Mr. *Cook.* They have concluded their Evidence, plead for your self, what you think fitting.

Cook. My Lord, I have been a Prisoner three moneths, I humbly desire to acknowledge his Majesties and his Councells favour that I was not put into a *Jeremy's* Prison, but in the *Tower* and not in *Irons*: I give your Lordships humble thanks for that, and truly considering the nature of the Charge, had it been in some other Kingdome, they would have served us as *John Baptist* in prison, I thank you that I have a fair Trial with the *Judges* of the *Law*, who are upon their Oaths to do equal right and justice between our Soveraign Lord the King, and every Prisoner concerning matters of life and death, and likewise those Noble Lords that though they are not put upon their Oaths but upon their honour, if they know any Law to preserve my life, I trust they will rather save then destroy. My Lords, I do therefore say as *Paul* said, my plea is much of that nature, *against the Law, and against Cæsar, I hope I have not offended at all*, and so I have pleaded not guilty. The learned Councel have examined several witnesses against me; and I humbly conceive that the matter will rest in a very narrow compass; The substance of the charge (so far as my memory will serve) doth rest in these three things, the other being but matter of form. *That I with others should propound, consult, contrive and imagine the Death of the late King.* Secondly, *That to the perfecting, and bringing about this wicked and horrid conspiracy, that I with others did assume a Power, and Authority* (as I remember) power I am sure, *then to kill and murther the King*; and thirdly, *That there was a person unknown that did cut off the Kings head and that we were abetting, aiding assisting, countenancing, and procuring the person* (or words to that effect) *against the form of the Statutes, and so forth.* I have twelve poor words to offer for my self in this business, wherein if I do not answer every thing that hath been particularly objected, I hope you will give me leave afterwards to offer it. First, I

humbly

humbly propound this, that if it was not made appear to your Lordships that I did ever propound, consult, advise, contrive, attempt, or any way plot, or counsel the death of His Majestie; then I hope, I cannot be found guilty within the Statute of 25. *Ed.* the third, for the naked truth, Mr. *Nutly* hath in a great part spoken to, I was appointed upon the tenth of *January* 1648. for to give my advice concerning a Charge, there having been upon the ninth a Proclamation for the Triall, and upon the tenth Mr. *Steel*, Dr. *Doriſlaus*, and Mr. *Aske* and my ſelf were appointed, and ordered to be of Council to draw up a Charge; Here I have the order atteſted by Mr. *Jeſſop*, and pray it may be read.

Court, They do admit the thing, that you were ſo aſſigned;

Cook, Then I humbly conceive that that cannot be ſaid to be done maliciouſly, or adviſedly, or with any wicked intention in me, which I was required and commanded to doe; Acting onely within my Sphere, and Element as a Counſellour and no otherwiſe. The next thing is this, my Lord, that by Law words will not amount unto Treaſon, we uſually ſay, that words may declare an Heretick, but not a Traytor; there were ſome Statutes formerly 1 *Edw.* 6. there words are made Treaſon, but they are all repealed by 1 *Mariæ*, that nothing ſhall be Treaſon but what is expreſſed in 25 *Edw.* 3. this Objection will ſeem to lye, that theſe were words put in writing, and that I humbly conceive to be the greateſt matter objected, to which I anſwer, 1. Whether there be any full, certain, clear proof that that is my hand to the Charge, I muſt leave to you; two or three witneſſes, ſay they, believe it, and that it is like my hand, that I leave to you, if that appear, yet (My Lord) that that is put in writing as done by another that is the Dictator, and does dictate unto me, I humbly conceive that for any man to write words, which in their own nature may be Treaſonable, if he doth but write them by the command of another, by ſpeaking them after another, taking them upon rebound, that is not Treaſon, becauſe they do not diſcover a trayterous heart; Thoſe words of compaſſing the death of the King in the 25 *Edw.* 3. they are ſecret imaginations in the heart and they muſt be manifeſt by ſome overtact, that which was dictated (my Lord) unto me, that I had expreſſly preſcribed me, what I ſhould ſay, what words I ſhould ſay. That I did not invent any thing of mine own head, of my own conceit, and therefore cannot properly be ſaid to be maliciouſ.

licious. The next thing that I crave leave to offer is this, that the pure and plain demanding and praying of Justice, though injustice be done upon it, cannot possibly be called Treason within the statute, then I hope nothing that ha's been said against me will amount to Treason: for the words in the natural, grammatical, plain, genuine and legal sence will bear no other construction, as I humbly conceive, but (that whereas those Gentlemen had his Majestie then in their power a Prisoner) that it was prayed by me, that they would do him Justice; I do hope that it will appear that I did give *Bonum & fidele Consilium*. It will appear, I hope, that some would have had a very voluminous and long Charge, that I was utterly against it, as conceiving that it was not fit and requisite, that any thing should be put in, at least I durst not invent one word my self but what was expressed in the Act for Tryal, if your Lordships will not admit it an Act, you will an Order, and so it will bear me forth, at least to excuse me from Treason, because I kept my self to the words, whereas in that it was said that they should proceed according to the merits of the Cause, I was against that, that I did not understand that, but according to Justice, and that is but according to Law, because the Law is the rule of Justice, I do humbly hope (my Lord) that if by Law when words may be taken in a double sence, they shall alwayes have the more favourable interpretation, much more when the words in the Legal sence will bear it, when it is prayed they will proceed according to Justice, I hope it will not be inferred, there was any intention of doing injustice, when justice was required. And therefore (my Lord) the next word that I would offer is this, if my Lord, in all Tragedies which are, as we call them, judicially, or colourably, there are but these four Actors: Accusers, or, Witnesses, The Jury, Judges and Executioner. If I be none of these, I cannot be Guilty of Treason, I hope I may safely say according to Law, that I had not a hand at all in His Majesties death; my Lord, the Court and Councel, it is very true, they do aime at the same thing; the Councel *Requirendo Justitiam*, the other *Exequendo Justitiam*, the end being the same, to have Justice. If when justice be demanded, and injustice be done, what is that to the Councel? we read 19 of *John* concerning *Pilate*. *Knowest thou not* (speaking to Christ) *that I have power to crucifie thee, and have power to release thee?* my Lord, I humbly answer this to that which seems to be the most ma-

material part of the Indictment, that we did assume a Power.
My Lords, I did not assume a power, I hope it will not be so
that the councell had any power, *Eloquentia* in the Councell, *Scien-*
cium in the *Judges*, and *Veritas* in the Witnesses. 25 Acts. *Ta-*
pullus, that eloquent Orator, accused *Paul*, *Paul* answered for
himself, and it is said *Festus* being willing to do the *Jews* a courtesie
he left *Paul* bound, it was not the Councell that left him bound, for
Majestie was never a Prisoner to me, and I never laid any hands
upon him; if any witnesses have spoke of any irreverence, I must
appeal to God in that I did not in the least manner carrie my self
undutifully to his Majestie, though one of the witnesses was pleased
to say, that I said these words, *that there is a Charge against the*
Prisoner at the Bar; it was not said the *Prisoner at the Bar*, there
was not one disrespective word from me. There is a Case in the
third *Institutes* of the Lord *Cook*, it is to this purpose. That one
wilfully and knowingly forswore himself, the Case was put to in-
veigle the Court, and though the Court does injustice upon a false
Oath, it is not injustice at all in the Witness, it is Perjury in him;
if there can be no injustice in a Witness, much less a Counseller can
be said to have his hand in the death of any, because he has no
power at all this must needs follow, that if it shall be conceived to be
Treason for a Counseller to plead against his Majestie, then it will be
Felony to plead against any man that is condemned unjustly for fe-
lony. The Counsellour is to make the best of his Clients cause, then
to leave it to the Court; it is said, I should demand judgement, I do
not remember that, I leave it to you, but still to demand Justice.
Counsellers they doe ingage in businesse before they doe right-
ly understand the true matter of the fact, it is part of a *Serjeants*
Oath, that so soon as he does discover the falsity of the Cause, he
should forsake the Cause, my Lord, by what *Mr. Nutly* hath said,
it appears, and I have manie Witnesses in the Countrey, three or
four in *Leicestershire*, would have spoken full to this, that (my
Lord) there was not before the Sentence of the King (to the best of
my knowledge) a word spoken by any, that they did intend to put
him to death; I say to my knowledge, and my Lord, when Judg-
ment is demanded, is it not two-fold, of Acquittall and Condemna-
tion? if those that then were entrusted with the power of Judicature,
if they did not know any Law to proceed by to take away the

Man-

Majestie, then I demanding their Judgement, it doth not appear to be my Judgement; and I refere it to the learned Council, that Council many times at the Assises and other Courts have been sorry that the verdict hath been given for their Clients, when they have known the right lay on the other side; and so might I in this. The next thing I humbly offer, is, that if in right reason considering the condition His Majestie was then in, the advising to draw up the Charge, was rather to be looked upon as a matter of service then offervice, then it cannot be called Treason, it is very true my Lord, that a very small little Overtact will amount to a Treason, and my Lord, had this been in times of peace and had His Majestie been no Prisoner, (now he was under the power of an Army) this had been great Treason; but he being a Prisoner, not by my means, (for I was no sword-man) what can a man that knows himself innocent, being a Prisoner, desire more then a speedy Tryal? so that making the Trial more speedy cannot be said to be done trayterously. A Tryal doth follow imprisonment as naturally and necessarily as the shadow doth the body. If any shall desire and be instrumental in bringing him to a Trial which might acquit rather then condemn him, and so humbly pray proceedings according to Justice, this will have I hope a better name then Treason. I am much beholding to His Majestie and this honourable Parliament, for the penning of the Act of *Indemnity*, which I hope my Lord you will give me leave to take notice of——

Court. Open as much as you will of it.

Cook. My Lords, the words that I would make use of, are in the beginning, Treason, Murder & other felonies that are spoken of, they are said to be counselled commanded, acted or done; in the preamble which is as the key to open the mind & meaning of the Law-makers, it is said that all persons shall be pardoned for all, excepting such as shall be named, and in such manner as they shall be excepted, and then it comes, provided that this Act shall not extend to pardon such, and such persons & by name, I am one; and it is said all which persons for their execrable Treason in Sentencing to death, or signing the Instrument for the horrid murther, or being instrumental in taking away the precious life of our late Soveraign Lord *Charles* the First of glorious memory are left to be proceeded against as Traytors to his late Majestie, according to the Laws of *England*, and are out of the said Act wholly excepted, and forprized. There is not any

thing offered against me upon the two last great words, which are Sentencing & signing that which I have to doe to endeavour to cleare my self is this being instrumental in taking away the life of His said Majestie, first I humbly offer this to the Juries consideration. That where the Parliament doth begin to fix the treasonable part, there I hope, and no otherwise this honourable Court will fix it: if it had been the Intention that Counsellors, advisers, and such as spoke their minds sometimes in the businesse (you know that was Epidemical) many words were spoken which cannot be justified; whether naturally it would not have followed, that all which persons for their counselling, advising or being instrumental, are left to be proceeded against as Traytors, I hope you will take that into consideration, concerning the words, or being instrumental, observe it is not said, or being any otherwaies instrumental, but Sentencing, signing or being instrumental, if therefore the word Instrumental be not of a generall comprehensive nature, then all this evidence which hath been given in against me, being before the Sentencing and signing, will fall to the ground, that this is the legal, genuine, and Grammatical sense, and cannot be any otherwise, then as particular, as if it were the Sentencer, signer, and Executioner, which if it had been so, nothing of the Evidence would have reached me. My argument is this, such a use is to be made of an Act of Parliament, that no word may be frustrate, and insignificant, but if this Interpretation shall be put upon it sentencing, signing, or being any way instrumental, then the words, Sentencing and Signing, need not have been, if Instrumentall will carry the words Sentencing, and signing, then these words will carry no force at all, especially, my Lord, when there is no need of any retrospect at all, if it be so I know not how far it may look back; there is no necessity of putting any comprehensive generality upon this word Instrumental, but that the plain natural sense will be this, That those, that did sentence and Sign, and those that were instrumentall in taking away his life, that is, those that did abet, and comfort that person unknown, or justifie, or countenance him, which is after the Sentencing, and not before in the legal sense. Next I conceive that a Councellor cannot be said to doe any thing, *vi & armis*.

It is said that by force and Armes I did abet *&c.* it is Rhetorical to say that words may be as Swords, but legall it is not, unless there be something *vi & armis*, in the Grammaticall sense, instrumentall in

taking

taking away the Kings life, it is not said instrumental in order to take away the Kings life, or instrumental in advising to take away the K. life but instrumental in taking away the Kings life. My Lord, The next thing is, that there cannot be any thing to be said to be done by me, first not *falso*, because in that sense it must have the operation of mendacitie, that there must be a lie told in it, I did nothing but what I was required to doe, to set down such and such words, I did not invent nor contrive them, I heard nothing of it till the 10. day of *Jan.* My Lord, for *malitiose*, that I did not any thing maliciously, I hope it will appear in this, what I then spoke, it was for my fee, it may be called *avaritia* but not *malitia*, for the Law will imply a malice, but when there is no other expresse ground or reason why the thing was done, but here was an expresse ground to speak for my fee, I hope the Jury will take that into consideration. Then Secondly I was not Judicial in the Case, I was not Magisterial as any Officer, but ministerial. As touching examining of witnesses, it is a great mistake, the Court had power to give an Oath; I might be there; but I had no power to give an Oath, but whether I might ask any question, I do not remember, but that I should give an Oath that is a falsity; then my Lord, for *proditorie*, I hope there is nothing at all that appears to the Jury: so that there was no malice nor traytorous intention in the thing. There are some matters of Law which I desire your Lordships will give me leave to speak to, and that your Lordships will be of Counsel with me. I would offer something concerning his Majesties gracious Declaration from *Breda* to the Parliament (I was then in *Ireland*) I did put in a Petition to the honourable Commissioners before any exception was, that I might have the benefit of that Declaration, I did lay hold of it, my Lords there are two things in that Declaration that I would offer, His Majesty saith that for the restoring of the Kings Peers & people of the Kingdome to their just rights and liberties, He will grant a free and general Pardon to all, excepting such as shall be by Parliament excepted, and within three or four lines after it is said a free Parliament, though I doe not in the least question the Legality of this Parliament, yet my Lord to this particular purpose, whether the Parliament that was to except ought not to be a Parliament that was to be called, according to his Majesties Writ, according to the Laws of the Kingdome, I humbly conceive it will bear that, though His Majesty is pleased to confirm this, yet it is not such a Parliament

hat was to except, that I offer to your Lordships. My Lords that that I would humbly make bold to put for my self, because it is the privilledge of one in my condition, is this. There is my Lord, many Lords, the Earle of *Essex*, the Earle of *Southampton*, and others that were adjudged in the 44. of *Eliz.* the 3. *Iustices*, they did trayterously and maliciously conspire to take her Majestie Prisoner, and to remove her Counsellours from her, which were found guilty and suffered accordingly; the reason is, That because thereby if it had been done, they had despoiled her Majestie of her Regal Government, & the case is instant in *Philip* who was a nominative King, that it was not Treason to have attempted any thing against him. My Lords, his Majesty being a Prisoner without any hand of mine, I giving advice according to what was dictated to me to bring him to that tryal, whereby he might have been acquitted, and so set at liberty: I hope that will not be said as instrumental. My Lords, I humbly shall offer but two words, 1. to the honourable Court, then to the Jury, the words of the 25 E. 3. and so the exposition of the learned Judges have been from time to time, that there shall be no semblable Treasons made by presumptions or strains of wit, but those Treasons specified there; It is said if a Husband doth kill his Wife, or a Wife kill her Husband, a Master should kill his Servant, or the Servant should kill his Master, that that shall be petty Treason; a Child did kill his Father, though that was looked upon as a greater sin, yet the Judges do not presume that to be treason because it was not in the very words: this being an extraordinary Case, to write a thing after another, doth not appear there was a malicious heart in him that did write. There hath been the Act of Parliament that doth call these Courts Tyrannical and Unlawfull Courts; but my Lords, a Tyrannical and Unlawfull Court is a Court *de facto*, though not *de jure*; if a Court be not a just and lawful Court, it cannot be said but that it is a Court: we say a Thief is a true man, though morally he is not so; this was a Court: Officers attending on them, some said they had authority, and therefore for one to come and act within his Sphere, not to act out of that, nor to do any thing, but what he had a prescript form appointed him, I hope that will not be found to be within the letter of the Law; I have been told (how true, I cannot tell) that there have been some votes in the honourable Parliament, that those that did onely counsell or advise, those were not to be looked upon as Traytors;

[illegible]; I have been told so, that those that did only speak as counsell for their fee, who were not the contrivers of it, the Parliament did not intend they should be left to be proceeded against.

Coure. That Letter that was sent from the Commons to the King at *Breda*, they speak first of the violation that was put upon the Parliament, and of the base horrid Murther of his late Majestie. It is said that the Parliament (I conceive they meant of the remaining part) they were not guilty, but some few ambitious, bloudie, guilty persons, who contrived the same, and others misled by them.

Cook. The other matter of Law is this, I say that I do hope that though that order, which I was about to produce concerning my acting, that if it may not in a legal sense any way be said to be an Act of the Parliament and Commons, yet it may be said to be such an order to bear out those that did Act according to it, because there was then no other authoritie *de facto*, otherwise it were not lawfull for any man to exercise his profession during such a Power. I hope, Councellors might then exercise their profession, aswell as others; My Lord, though I should suffer my self in this Case, I should be loath the honourable profession of the Law should, I think I was in my Sphere acting as a Counsellor. Now Gentlemen of the Jury, that which I have to say to you is an evidence concerning matter of life, it must be so clear that every one that heares it may understand it. It is called an evidence because it is evident, it is one reason, why Prisoners for their lives are not allowed Counsell for matter of fact, because the evidence is, and ought to be so clear, and plain that everie one should be satisfied both Jurie and standers by, and it is a proper word to say the Prisoner is convicted, that is, as much as his mouth is stopped, and therefore I say, truly as I hope, I may speak it to you without offence, as *Jeremy* in another Case, when some of the people would have had them put him to death, *as for me behold I am in your hand, doe with me as seemeth good and meet unto you.* 26. Jer. 14. 15. *verse*, saith he, *But know ye for certain, that if ye put me to death ye shall surely bring innocent blood upon your selves.* I hope you will not willingly be Guiltie of any such thing, I must leave it to your consciences whether you believe, that I had an hand in the Kings Death, when I did write but onely that which others did dictate unto me, and when I spoke onely for my fee, and this I would be bold to say, though the argu-

ment

ment is not so directly confessed, that humane Justice, (I do first lay as this my principle, and opinion is) that as every man ought to pay his moral debts, so all political debts, there is a debt due to humane Justice, so political, if the Lord should have suffered me to have been drunk and kill'd a man for which I ought to have died, in stead of speaking for my self, I would have rather intreated the Jurie to have found me Guilty, I think these things ought to be answered political debts, when I was in *Ireland*, and had opportunity opposing away if I thought I had been Guilty I might have done it, my name is put into his Majesties Proclamation. It is true, I was a Prisoner three or four moneths before, so that I could not render my self, to what end should that Proclamation mention my name? it was said I obscured my self, but I did not, humane Justice doth never punish, so much for expiation as for prevention; The Judgements of the learned *Aquinas*, *Grotius*, and *Amesius*, and many others, that if a man doth kill a man, commit any thing worthy of death, though he doth repent never so much, yet that others may be deterred from committing such Acts, the Magistrate is bound to put him to death. But where there is not such a thing there it is different, though it is said the land is defiled; that is, where there is danger that the like may be committed again, now all things are settled there is no danger at all, now there can never come such a case as this again, I say my Lord what I acted I did as a Counseller, I had no malitious intention in it. Mr *Nutley* bare testimony so far; that I told him *there was not intention of putting his Majesty to death*, I only did say that *I desired them to do Justice*, and I hope what was done, was their Act, not mine, and so I leave my self to your Lordships.

Court, Silence commanded.

Mr. *Sol. Gen.* My Lords this Gentleman who is the prisoner at the Bar, requires such an evidence of the Fact as may be evident, he saith so evident as may be as clear as the Sun, I think that evidence is not to seek, but if he must never be convicted till he be so far convinced as to be speechless, I believe we may stay long enough, nevertheless if he be willing (as he saith he is) to pay his debts to political Justice we shall quickly give him the total sum. That which he hath said, hath been like a *Lawyer*, the best that his Case will bear, but withall it is a great aggravation to his Crime, that he that knew the *Law* so well should so much transgresse it; he began, *Words do not make treason*, he mistakes, his Charge is not for words, Gentlemen, his

Charge

Charge is for *compassing and imagining the Death of the King*, and the evidence of that Charge is meeting in that Assembly, and the part that he bore in that Assembly. And yet my Lords he will be much mistaken too: (under favour, and with submission to your Lordships Judgement, and those that hear him, if they think that in all Cases it is a general rule, that words are no Treason; for when a man shall proceed to declare the imagination of his heart, as to exhort and perswade men to effect that wicked thing, *The killing of the* King, certainly there cannot be a greater overtact then these words, nor a clearer evidence of such an imagination, *for out of the abundance of the heart the mouth speaks*. My Lords, to say that the demanding of Justice is not Treason, though injustice do follow, is a very weak gloss upon a wicked action, The Subject matter was a Charge of *High Treason against the King*, the conclusion of the Charge was *a Protestation*, by which he saved to himself a Liberty to put in a new Charge, if that was not sufficient; upon the whole he desires that the King *as a Traytor* may be brought to Justice, Judge you now Gentlemen upon the nature of this demand, whether this were such a demand of Justice as might end in acquital; Whether he that presses that this Charge may be taken *pro Confesso*, did mean that when the Court had recorded it, They should acquit him when they had done. My Lords, to say there are four Actors in this Case, the witnesse, or accuser, the Judge the Jury, and the Executioner, and that he is none of them, and therefore in this Case he cannot be a Traytor: still my Lord that is to beg the question, for if he be one of them that did Assemble in the place, and were any instrument of that Assembly, he hath thereby given an evidence of an Overtact of his wicked heart, and when all is done this poor gloss amounts but to this, *I am none of those four Ranks; that is, there were others worse then my self, and therefore I am none at all*. My Lord, the thing that he hath mainly insisted upon is the Act of Indempnity, my Lord, he doth observe that his name is excepted in that Act, That he doth hope that it is so penn'd as by the favour of the Parliament it may reach his Case, and he hath argued very much upon it, and he speaks as if he did believe it himself. But surely there is no colour for that interpretation, that he should step out of this proviso, by the very Act of *Indempnity* that was made on purpose to bring him in by Name, the words are, *provided that this Act, nor any thing therein contained, shall extend to*

Pardon

Pardon give any benefit to John Cook, *&c.*. All which persons for their execrable Treasons in Sentencing to Death or signing the Instrument for the horrid Murder, or being instrumental in taking away the precious Life of our late Soveraign Lord *King Charles* the First of glorious Memory, are left to be proceeded against as Traytors, *&c.* First, my Lord, this general and clear answer I conceive is to be given, that the Prisoner at the Bar being by Name excepted out of the Act of *Indempnity*, by the *proviso* mentioned in it, although the subsequent lines that follow be the reasons why the *Parliament* do except; yet if he be within the very words of the Exception, whether he be in the reasons that moved them to that exception is not material, if he could distinguish that he was not instrumentall in that sence to which he labours to restrain this Proviso, he can but say this, the Parliament was mistaken in their reason, but not in their conclusion, but he is directly within the exception and the reason of it too, for the word instrumental goes as far as far can be, and he is properly and literally in the strict notion of the word, an instrument of the death of the *King*: The *King* could never have been brought to death, if not to the Bar; never had been sentenced, if he had not been impeached; that impeachment could never have been taken *pro Confesso*; nor the impeachment it self delivered, if he had not delivered the one, and pressed the other: He that brought the Axe from the *Tower* was not more instrumental then he, and besides a Lawyer as he, of great understanding, and of good parts, he knows very well there are no accessaries in Treason, but he that Acts any part in so wicked a Conspiracy let him begin at what end he will, he stands responsible for the utmost consequence of it, and in effect the very penning of this Proviso, is an expresse Judgement of Parliament, that he was instrumental, but that is not to be pressed.

The next thing he doth insist upon is, the Declaration of his Majesty, that he sent from *Breda*, which he saith he laid hold upon; here lies the weight of his answer, The King writes his Letter to the Parliament now sitting, that he doth purpose, for the quieting of the hearts of men that may be in doubt, to pardon all persons, all crimes of what nature soever, either against himself or Royal Father, excepting those which shall be by Act of Parliament excepted, and my Lord, he doth say, and modestly presses, that he doth conceive, the meaning of that is to pardon all persons, what crimes soever they

have

have committed; Except such as by a Free Parliament shall be excepted: a legal Parliament called by the Writ of the King; which this Parliament is not. To that I give these answers. First my Lord, I do say that this letter of our gracious Sovereign from Breda in it self undoubtedly is no Pardon in Law for Treason, that cannot be without the Broad Seal. Next, a Pardon under the Great Seal in such a form of words as this is, would not be a Pardon for Treason, for that must not be pardoned by implication, but by positive words; so in the Case of Sir Walter Raleigh a Commission directed to our well beloved Subjects would not pardon the Treason, of which he was condemned. In the next place this Letter at the most is but a pardon in honour, which must always be taken according to the meaning. And that the Kings Honour may for ever be sacred, I say this Letter doth no way help the Prisoner at the Bar.

First, it is plain by the very Superscription of this Letter, in which the Declaration was inclosed, that it is directed to the Speaker of Our House of Commons in Parliament assembled, which cannot possibly be expounded of any other Parliament then that, which was then sitting, to whose Speaker it was written.

Secondly, the Letter it self sayes, we have left it to you to provide for security and Indempnity, and again, if there be a crying sin for which the Nation may be involved in infamy, we cannot doubt, but you will be as sollicitous to vindicate it, as we can be. And then in this very letter encloseth that Declaration, upon the penning of which the Prisoner so much rales. Now lay all together, and it is clear the Parliament meant by the Declaration must be the same Parliament, which was meant by the Letter, and that was this very Parliament whom the King intended to trust, both with Indempnity, and with the vindication of his Fathers death, and to be the Dispensers both of mercy and Justice in this particular. Another thing is this. This very Parliament as the Prisoner observes, they did go to the King according to His gracious letter, and in the behalf of all the good people of England, and they did lay hold of the Kings mercy in His Letter, and Declaration, and prayed that this claim by their Speaker in behalf of all the rest of the Commons of England might be effectual

to all purposes, and for all persons other then those that should be by themselves afterward excepted, according to their requests. His Majesty excepts their Petition, and makes Proclamation, that his Pardon should extend to all, but such as they should except, what can be more clear and evident, then that this is the Parliament which the K. did mean to be the very Parliament, to which the Letter should have reference till the Act of Oblivion was passed again? the late transactions of these twelve years past, had involved so many persons, that we could scarce finde a man but he had need of mercy, nay this very Parliament to which the Letter was written, had need of Indemnity, and is it probable in the nature of the thing, or can it be understood by any man, that the King writing to this Parliament, and offering them pardon and Indempnity, should mean such a pardon and Indempnity, as a future Parliament to be called by his own Writ should be willing to afford them, Whose hearts would have been satisfied with so contingent a security?

My Lords, upon the whole matter by what the King hath said in this Letter, and by what the Parliament hath done in pursuance thereof, and by what the King hath proclaimed, it is to my understanding as clear as the noon day, that the honour of the King is not concerned at all in the exemption of the prisoner at the Bar; and for the Cases of my Lord of *Essex* and *Southampton* which he hath cited, they make against him, they were condemned, because they endeavoured to imprison the Queen, and to remove her Councellours, of which very fact the prisoner is in Law guilty too; and then the Case of King *Philip*, the Husband of Queen *Mary* makes nothing for him neither, unless he will speak out, and tell us plainly, that because by a former violence the King was made a prisoner, he became but like a titular King as King *Philip*.

In the next place he saith my Case is out of the Law, I acted as a Counsellour in my own particular for my Fee, it was *avaritia*, but not *malitia*, nor *falso*, *malitiosè*, or *Proditorie*. But he must know, that no man hath or can have a lawfull calling, to pursue the life of his King, and the Law implies malice; for *malitiosè* and *proditorie*, are not onely words of course, but of truth too in this case, the

it were as much as to say, that no Council can be guiltie of High Treason, then which nothing can be more absurd: my Lord, for that which he said last (for I must omit some things, and give him leave to take the advantage of it) to stand upon it, that the place was a Court, such a one it was, that he was not answerable for the constitution of it, if it were not in a legal sense, it was such an order as might bear him out, that is, with modesty and good manners to justifie High Treason; it is not with such insolency as some others before him did it, but it amounts to that, That an order of a few persons that first made themselves a *Parliament*, and then made a Court of Justice, had Officers and met together, and perfected so great a Treason: I say that this Order to bear him out is impossible. He that is a Lawyer, he must accompt to the Lawes for what he hath done, if the authoritie were not lawfull, he cannot but know that this which he calls the *Parliament* was so far from a legal Authoritie, that it was one part of the Treason that he did assist such an Assembly.

Gentlemen of the Jury, this is your own Case, here is a charge that is exhibited by the Prisoner at the Barre, as he saith, in the name of all the people of *England*. Look to it, for you are some of them if you own it, then it may be true what he hath said, but I hope you meet here to tell this Nation and all the World that the people of *England* had no hand in that Charge, do but consider how that this Prisoner at the Bar had hunted the life of the *King*, how he did fish out and examine evidence whether the *King* set up his Standard at *Nottingham*, was at such a place and such a place, to what end is all this, but with designe of bloud? Were these things to be produced against the *King*, and then Judgement to be demanded that he may be saved? Is it not plainly proved to you by Witnesses, how he did exhibit the Charge, presse it, aggravate it, desired it might be taken *pro Confesso*, was afflicted with the delayes, how angry he was when he was interrupted? Is it not proved to you that he was at first against this thing, and said *it was a base businesse?* when he was engaged in it said, that he was *a Servant of the people of this Kingdome?* what doth he do at last when the thing had gone far? he speaks that which is the onely truth which I have yet heard from him, *He must dye, and Monarchy dies* too.

must perish with him; from which Event, good Lord deliver us.

Sir *Edward Turner*. My Lord, the substance of the defence that the Prisoner hath made at the Barre, with much skill and cunning, may be referred to two heads. The first to the Statute of the 25. of *Edward* the 3. The second to the late Act of *Oblivion*: for the first, my Lord, he saith that his fact is not comprized within that Statute, saith he, *I* did never conspire or imagine the death of the King, nor did believe that would be a consequent of their actings. It was expresly proved that himself did say that the King must die, and Monarchie with him, but Gentlemen though he had said true, that it had not been proved, or that he did not believe that would be a consequent, yet my Lord, I must tell you that every step of this Tragedie was Treason, the summoning themselves that was Treason, every proceeding upon that was Treason, the summoning of their meetings in the Painted Chamber, coming into *Westminster-Hall* every person as instrumentall, those that came to act the least part in that Tragedie were every one guiltie of Treason, what saith he, I acted as a Councellor for my fee. It was that see that *Judas* had the 30. pieces of silver, that made him hang himself. He goes further and tells you, there must be no semblable Treasons, this is clear; the conspiring, and imagining the death of the King, thats the Treason that is mentioned in the Act, Treason by the Common Law, though this be not named the killing of the King, yet all these proceedings are demonstrations to you, there was a Secret Imagination to kill him, Then to the Act of *Oblivion* his Argument is, That because the Act saith, that if they had Sentenced, signed, or been Instrumentall in the death of the *King*, that they should be excepted, but it is not said, or *otherwise Instrumentall* that therefore this should refer to subsequent, not precedent Acts, that's a strange Exposition, take it Grammatically it hath the most large construction, Instrumentall, more large then if they had said, or otherwise, for it doth comprehend every thing; There having been so full an answer already I will be short, I will not

not meddle with his civil debts, but with his Political. If a man kill another, though he doth repent, the Magistrate must doe Justice *in terrorem*. Though he doth repent, (I hope in God he doth so,) The Magistrates, your Lordships, must doe Justice *in terrorem*, I desire that Justice may be done upon that man. He said it was no Treason to demand Justice against the King, because he did but demand it, I hope he will think it no unkindnesse in me to desire judgement against him because it is just.

Mr. *Wadham Windham*. As I understand the Prisoner at the Bar, the chief argument which he sheltters himself under, was his profession, which gives a blast to all of us of the longe robe, I will not mince his arguments, saith he, here was a Court, I was appointed Sollicitor, and saith he, for men to practise before those that have not a proper Judicature, it is not Felony, Murther, or Treason, (I would not willingly mince his Argument) and that I was appointed, and the words dictated to me, and a Councellor carrying himself within the compass of his profession is not answerable, but if he will exceed his bounds, his profession is so far from sheltring him, that, as it hath been opened, it is very much an aggravation, it is the duty of a Counsellor to give Counsell, if a man shall come to me and ask counsell, and I shall counsell him to kill a man, am not I accessary to that murder? words by his argument will not amount to Treason, if the fact followes, I am as guilty as if I did the fact: in point of Treason it is all one as if I had done that very act. If Mr. *Cook* did advise that Act, or was instrumentall, he is as much a Traytor as the man in the Frock that did the Execution; for his profession, truly my Lord, I doe not think that a Counseller is alwayes bound to know the patent of him that sits as Judge, that will not be his Case; here was not ordinary Warrant of Law to carrie on Justice: *Grotius* saith, in case of necessity for carrying on Justice, there may be many things allowed: I pray where did Master *Cook* reade of such a Court as a High Court of Justice, there was never such a High Court of Justice

read

read of in the Law, then as this was, a mock Court, so under good favour it was a mock Jurisdiction. Was there any Law under Heaven to put the King to death? it is not out of the compasse of all Courts whatsoever to doe it? and under good favour my Lord this is but to shelter a mans self under colour of Justice to doe the most execrable Treason in the World; I have no more to say to you.

Lord Ch. Baron. I would repeat the Evidence and your answer to you, if you have any thing new, speak to it.

Cook. This is new, it was said by one, that if there had been no charge there had been no sentence given in the Case, I say that the Indictment or Charge is no part of the Tryal by the Statute of *Magna Charta*: The Peers of the Land shall be tryed by Peers, but are indicted by the Countrey; I conceive by what they have said, they doe make me causal of the Kings death. It is said in the Indictment, there was a power, Pray this, I did not assume any power, it cannot be said, if Council be come in to an unlawfull power, that he takes the power, but stands with respect at the Barre. At Assises Judgement passes, The Clerk of the Assises, he is not instrumental in taking away life; for that which Mr. *Scarsky* should say, that I should say, *The King must die, and Monarchie with him*, I humbly beg that the Jury would take notice of what Mr. *Nutly* said, that I told him there was no intention of taking away the Kings life, and besides it is but a single witnesse, I hope there must be two witnesses in point of Law, to convict a man of High Treason.

Lord Ch. Baron. Mr. *Cook*, you said right but even now, that if there was any thing in matter of Law which the Court knows of, which may be of advantage to you, they are of Council to you, and so they ought to be.

Cook. I thank your Lordships.

L. C. Bar. I shall repeat the whole Evidence, and begin with that first, (we are upon our Oathes) the Witnesses that are against

gainſt you, I took notice of them, you have had a great deale of Liberty which you have made uſe of civilly, but Sir, for the fact, I think it is a great deal more full then as you have anſwered. Firſt, The firſt witneſſe produced againſt you was *Mr. Nutley* (I ſhall ſpeak onely the material parts, that concern your Charge) He ſwears expreſſly, that he ſaw *Price* a Scrivener writing a Charge in the Court of Wards, that he ſaw his Charge in your hands; He ſaw afterwards when the *King* of bleſſed memory was brought as a priſoner, that there you delivered the Charge in, there is more then words, you delivered that Charge in, that alone is an overtact; then if there were nothing elſe in that Caſe, that a man in a paper ſhould call the King Traytor, Tyrant, Murtherer, and implacable enemy, as there the words are, and he delivered this paper, and this be read, if this be not an overtact of imagining, and compaſſing the *Kings* death I do not know what an overtact is, and he gives further evidence (if I miſtake) take free liberty to interrupt me.

Cook, Sir, they were not my words, but their words that commanded me.

Lord Chief Baron. This I ſay, that this very thing alone, ſuch a paper approved by you, delivering this paper to an Aſſembly, and requiring it may be read: this is an overtact to prove the imagination of your heart for the Death of the *King*: the reaſon is, if the *King* ſhould be a Tyrant, a Traytor, *&c.* it ſtirres up hatred in the people, and the conſequences of that hatred is the death of the Prince. The next thing that Mr. *Nutley* ſaid was this, He ſaid that you demanded poſitively Judgement againſt him, againſt the bleſſed King then priſoner at the Bar. I remember you ſaid that you did demand Judgement, but that you did not demand Judgement againſt the King; take it ſo whether you did, or not, (though you ſhall find in ſome other Witneſſes that I ſhall repeat, that you ſaid Judgement againſt the King) the conſequence will be the ſame; who could you demand Judgement againſt but the King, he was the Priſoner; becauſe he did demand a further hearing by the

Par-

Parliament, you urged that his Charge might be taken *pro Confesso*, then it must needs be Judgement against the King, it is effectively and implicitely the same. He went further, and that was, that being your friend and acquaintance, and acknowledging your parts as a Lawyer (which truly I do very much know my self, and do know this Gentleman to be a man of very great parts in his profession) he had familiar acquaintance with you, he told you what a base businesse it was, and you did your self acknowledge it, said the Prisoner to Mr. *Nutley* himself, it is a base businesse, but they put it upon me. He did discourse further to him of the Oathes of Allegiance and Supremacy, which he knew very well, no man better, this Gentleman he very ingeniously confessed it, saying, *I* confess it is so, they put me upon it, I cannot avoid it; but then excuses it, I am the servant of the people; Afterwards he pressed the King to answer positively whether guiltie or not guiltie, the prising of the King to answer, what was it in effect, but to hasten Judgement? and that was to hasten his death, so that that is the substance of Mr. *Nutley*'s testimonie, that he pressed Judgement, Judgement was demanded by the Prisoner now at the Bar, it is not onely demanded but pressed, and all the current of the witnesses at several dayes are to this purpose, it is true (that I may repeat the whole for you, and against you) that this Gentleman the prisoner at the Barre, when Mr. *Nutley* did urge this to him, said, he hoped they did not intend to take away the Kings life, I verily believe they doe not intend to take away the Kings life, I hope they doe not. But Mr. *Cook*, it is no excuse to say you hope, or you believe they will not, *&c.* How far it may be in such a crime something in extenuation, *in foro Cœli*, but not *in foro Civili*; you confesse it your self, that if a man should go about to take the King Prisoner, it is Treason; the Law adjudged that to be Treason, when you knew they would condemn him as a Tyrant, Murtherer, *&c.* you must easily believe what would follow such a condemnation. Truly death, that is no colour of excuse *in foro Civili*. *Farrington* swears to the same purpose, that he saw you having a Parchment in your hands, delivering it in, and prayed it might be read as a Charge of the People you did not speak, deliver this in as from those that deliver'd it to you

that

that was not in the paper, that you ſaid of your ſelf, My brethren will tell you all, this is an apparent point of the imagination of your heart; at that time, he ſwear the ſame thing, that you did deſire it might be taken *pro Confeſſo*, Maſter *Bodurdo* is the third, he ſwears the ſame thing too, that you exhibited a charge of High Treaſon againſt the Priſoner then at the Bar, and tells you the ſubſtance of it, he ſaith that all but the firſt day you demanded Judgement for not pleading to the Charge, he adds that you complained of the delayes, I am ſure that was not dictated to you, that could not be thought that you ſhould deſire Judgement for the Priſoner. It is very true which you ſay for your ſelf in that, that you did not demand it firſt, till it was demanded by the Court, Maſter *Bodurdo* tells you, and ſo it was granted, the firſt day that *Bradſhaw* onely ſaid it, but afterwards that you alwaies demanded it; The next was Maſter *Herne*, he ſwears the ſame words again, that you did in the Name of the Commons aſſembled in Parliament, and the people of *England*, exhibit a Charge, *&c.* Theſe are your own words, if you did exhibit a Charge againſt the King, to exhibit a Charge of High Treaſon the very thing followed, If it were ſo, there was death, ſo certainly there cannot be a greater expreſſion of the imagination of a mans heart, then that is, it is true, you asked then a queſtion, and that was, whether that, that you concluded, was not that you deſired them to proceed according to Juſtice, it is true, the words of the Charge are ſo, but before you come to concluſion you charge Him as a Traytor, Tyrant, *&c. Communi Hoſtis*, after you had given that Charge, you demanded Juſtice, thoſe that ſpit in his face they demanded Juſtice, everie one knew what belonged to that Juſtice. Then *Baker* he ſwears poſitively that you did exhibit the Charge in this manner, he ſaid this that you ſaid, you had exhibited a Charge of High Treaſon, *&c.* and that the King ſought delayes, there is your inſiſting upon it, he ſayes further that you ſaid theſe words, that you did deſire judgement ſhould be given againſt him, and not ſo much you as the bloud

that had been ſhed that cryed for judgement, truly whether that was a judgement that you intended for acquittall that muſt be left to the Jury. You asked (becauſe I will repeat it in order as my memory will give me leave) whether there was any other words in the charge, then was in the Proclamation? Mr. *Cook*. Whether there was any other words, or no, that differed in the Proclamation, as it was a great ſinne and foul fact in the Proclamation, ſo it was as foul in the charge. Maſter *Maſterſon* ſwears the ſame too, he heard you ſay the ſecond day you had delivered a charge (the day before) againſt the King; and that he had delayed his anſwer, you deſired he might plead guilty, or not guilty, the laſt day, that you did in the names of the Commons Aſſembled in Parliament, and the people of *England* demand judgement againſt the King, and then another ſwears thoſe words, judgement againſt the Priſoner at the Bar, which was the King. *Burden* ſwears, you examined him as a Witneſſe againſt the King, in what place he was with the King, It ſeems he was in the King's Army, he ſwears you gave him an Oath, (it is teſtimony fit to be believed, but however, if you did not give the Oath, by what you ſay your ſelf, you may be by, and asked him the queſtion. Maſter *Starkey*, he tells you, that during the Tryal, and before the Sentence, that you, being an old acquaintance of his in *Grayes-Inn*, and ſpeaking with him, he ſpake like a friend to you, *I hear you are up to the ears in this buſineſſe*, and *whereas you talk of the people, there is a thouſand for one againſt it*, that you ſhould tell him again, *You will ſee ſtrange things, but you muſt wait upon God*, theſe words of waiting upon God are words of that nature, people do uſe them now adaies, when they would do ſome horrid impietie, which hath been the ſinne of too many; it is but a canting language, that is the beſt term I can give it: you told him then *He muſt die*, this was before the Sentence (that is to be obſerved, Gentlemen of the Jury) you ſay you did not know of the Sentence, you ſaid *He muſt die, and Monarchy with him*; you muſt here know that ſome of thoſe

perſons

persons that sate upon him said, the *King* was a gracious and wise *King*, and as Mr. *Cook* did say, and they were the best words they spoke, and *I* think he thinks so in his conscience, but in conclusion He must die; and Monarchie must die with him, others said, they did not hate King *Charles*, but they hated Monarchy and Government, but Monarchy was the thing that they would behead; I think I have done with the Evidence that was given against you, the Indictment it self was read, the Overtacts was the meeting, propounding and consulting about it. It appeares he was in the Chamber about the Charge, that he did propound it, he delivered the Charge, and it appeares withall, that he demanded Judgement, he desired the King might answer, or that it might be taken *pro confesso*: these are overtacts to declare the imagination of his heart. The answer of Mr. *Cook*, I will repeat it as clearly as I can, because nothing shall goe to the extenuating of the fact, but it shall be spoken. Mr. *Cook*, in your answer, your defence that you make, you set forth the heads of this Indictment, and you set them forth very truly; the heads are the aggravations of the Indictment, the Indictment was the compassing and imagining the death of the King; you said it was upon these grounds; that you did propound, abet, and consult the death of the King, that you with others did assume power and authoritie to kill the King, and that thereupon a person unknown in a Frock did accordingly kill the King. You say to the first part, if it did not appear that you did advise the death of the King, that you were not guilty: for that Sir, as I told you before, taking them either complexly or singly, if any of the particulars reached to one of these acts, it was enough; but it reaches to all: you required Judgement against the King as a Traytor, and that with a reason, and certainly death must follow: you say you were appointed to give your advice, you had a Proclamation, first for Tryall of the King, you had the Order of the tenth of *January*, whereby you were appointed to give your advice, if it were so, it will be no excuse at all, the Proclamation gives you no warrant at all, he that obeys so wicked a Proclamation, it will not save him; it ap-

peares you were privy to this before the Proclamation, if you were not at all, when such a thing as this is such a Proclamation and Act, and such a manner of Tryall, as I believe though you have read very much, you never heard of such a thing in our Law, or foreign Nations. That you thereupon should take upon you to be of Councel against the King, it aggravates the fact: other men may be impudent and ignorant, but you that were a learned Lawyer, your being of Councill doth aggravate the thing. You say, Secondly, by Law words will not amount to Treason, for that I would not have that go for law by no means, though it be not your Case, for you are not indicted for words, but words are Treason, and Indictments are often for it, but the difference is this: The Indictment is not for words, but compassing and Imagining the death of the *King*, words are evidences of the compassing and imagining the *Kings* death. It is the greatest evidence of the imagination of the heart. Words do not make a Treason, that is, if it be by inference, or consequence, but reductively, but if it be immediately, I shall say to a man, goe kill the *King* by that which is an absolute, immediate, necessary consequence to say, this is no Treason, I would not have that goe for Law, your Case is not for words; but for delivering a Charge, the ground that you speak of words may make a Heretick but not a Traytor, it was a witte saying, but you have no sufficient authoritie for it, these are words put in writing: we all know if a man put his words in writing; if a man speak treasonable words, and put them in writing, they have been severall times adjudged Treason, and so in (my Lord) *Cook's 3. Institutes* the *Case of Williams* of the *Temple*, there was a Book of Treason in his own Studie of his making, and he was indicted for it, words put in writing is an expresse evidence of the imagination of the heart, you say it was dictated to you, but when words are written in a Charge and your name to it, (which I had almost forgotten) thats more then words: the Witnesses swear the likenesse of your hand, they doe but swear the likenesse of

your

your hand, no man can ſwear more unleſſe he was preſent and ſee it, but you owned the Charge, and there your name is, that beſides the two Witneſſes there is your own actions to prove it, When two Witneſſes ſhall ſwear it is like your hand and you own that Charge, I muſt leave it to the Jurie: you ſay you did this after command, the words were dictated to you, the words were *conceptis verbis*, appointed, and ordered by the Court, but the preſſing was yours he ſtands upon delaies let it be taken *pro Confeſſo*, demanding Judgement, theſe were your words, another man may dictate a thing but you are not forced to ſpeak it, you urged it, owned it, you demanded not in the name of the Court, but in the name of all the people of *England*, you ſay further that your demanding Juſtice is not within the ſtatute, as I ſaid before, what can be the effect of demanding Juſtice but that the King ſhould die upon thoſe premiſſes; you ſay further that it was in behoof of the King, as you would urge it to doe the King a Courteſie in asking that the King might have Juſtice, but you did not name what Juſtice it was, but you did him a Courteſie, truly the King was but a little beholden to you for that requeſt, all the world knows what that demanding Juſtice was, it was to have the Kings head cut off, you went as far as you could, it ended with you when you demanded Juſtice, that is as far as you could, you cut off the head. S. *Paul* when the Witneſſes laid down the clothes at his feet, he ſaid, I killed *Stephen* the Martyr, you ſay, further that in all Tragedies the accuſer, or Witneſſe, the Jury, the Judge, and executioner are the onely perſons, and you are none of theſe, you are onely of Councel, if Juſtice vvas not done, what was it to you? you ſaid you did not aſſume a power, there was was onely Eloquence requixed in the Councel, it hath been truly ſaid that this is a great aggravation to be of Counſel againſt the King, you ſaid His Majeſtie was then a priſoner and accuſed, Counſel cannot be heard againſt the King, you undertake to be Counſel againſt the King in his own perſon and in the higheſt

Crime

crime; if the Council at the Barre in behalf of his Client ſhould ſpeak Treaſon, he went beyond his ſphere, but you did not onely ſpeak, but acted Treaſon, you ſaid you uſed not a diſreſpective word to the King, truely for that you hear what the witneſſes have ſaid, you preſſed upon him, you called it a delay, you termed him not the King, but the Priſoner at the Barre at every word; you ſay you did not aſſume an authority, it is an aſſumption of authority, if you countenance and allow of their authority; you ſay you do not remember you demanded Judgement againſt the King, that is fully proved againſt you, you your ſelf asked the queſtion, whether you did ſay againſt the King, he did not remember, but others poſitively, that you demanded Judgement againſt the King and priſoner at the Barre, you ſaid that before ſentence there was not an intention to put the King to death, to that Mr. *Starky* ſwears, that you expreſly ſaid, the King muſt die, and Monarchy with him, and this before the ſentence: whereas you ſay this is but one witneſſe, that there is to be in Treaſon two witneſſes, but that there ſhould be two witneſſes to every particular, that is an Evidence of the fact, that is not Law, if to one particular that is an Evidence, there be one witneſſe, another to another, here are two witneſſes within the meaning of the Statute, two witneſſes to the Indictment compaſſing and imagining the Death of the King, being accompanied with other circumſtances, this one witneſſe if you believe him, is as good as twentie witneſſes, becauſe other overtacts are expreſly proved by ſeverall witneſſes: You ſay next, for the drawing of the Charge, in right reaſon, it ought to be counted for the ſervice of the King: Firſt you doe acknowledge, and truly very ingenuouſly, that in the time of peace to bring him to the Barre, not being a Priſoner, is Treaſon (you ſay it) according to the Law, and that you delivered the Charge for the accelerating of the Charge, and that it was not done by you trayterouſly, you ſay the King was a Priſoner before, and you ſay what hands he was in, in the hands

of

of men of power and violence, if had been your duty to have delayed it, not accelerated it, that there might have been some means of prevention of that bloudy Act that followed; if you knew that to be Treason to make him a prisoner, Subjects do not use to make Kings Prisoners, but Death follows, you urge in the next place the Act of Indemnity, and that you are not excepted, for that, you have made as much of it as the matter will bear, yet you must consider, First, as a rule in Law, that where they are general words, when they come to be explained by the particulars, you shall not include them within the general: Mark the very words, they are these, *Provided that this Act, nor any thing therein contained shall extend to pardon, discharge, or give any other benefits whatsoever unto such, and such, (among whom you are named) nor any of them, nor to those two persons, or either of them who being disguised by Frocks, and Vizards, did appear upon the Scaffold erected before* Whitehall, *upon the thirtieth of* January 1648. *All which persons, these are the words. First*, It shall not extend to you, then it comes, *All which persons for their execrable Treason in sentencing to death, or signing the Instrument for the horrid murther, or being Instrumental in taking away the Precious Life of our late Soveraign Lord* CHARLES *the First of glorious Memory, are left to be proceeded against as Traytors to His late Majestie according to the Lawes of* England, *and are out of this present Act wholly excepted, and foreprized.* First, as I told you before, and as it was very well said by Master *Sollicitor*, admitting the reason had been mistaken, and that you had not been comprehended in the reason, you are excepted out of the bodie, provided it shall not extend, *&c.* Many times Lawes doe make recitals, which in themselves are sometimes false in point of fact, that which is the Law is positive words, the other words are for the reason; Excepting all which, that is, Master *Cook*, which persons are excepted not for doing of it, but for his execrable crimes in being Instrumental. It is clear without that, if it were not so, we say when a

Sentence

Sentence is, or such a one, or such a one; the third Or makes all disjunctive: Here are three Or's, first in sentencing to death, or signing the Instrument, then comes this, or being instrumental in taking away the precious life of our late Soveraigne, &c. this Or doth clearly exclude the other two, or instrumental not onely in point of death, but further, being neither a Sentencer, Signer, or being instrumental in taking away the Kings life; that is, being any way instrumental. Truly, whether it be not instrumental to exhibit a Charge against him, or complain of his delayes, to ask Justice against him in the name of the people; to doe all this, and desire that the Charge might be taken *pro Confesso*, if this be not instrumental, I know nothing else. Sentencing and signing: Some signed the Sentence, some the instrument for death: the next degree of being Instrumental, the highest degree of that, is to accuse him, to deliver in the Charge against him, in the name of the people, do it again and again, be angry at the delayes. The next thing is this, that you did not doe this *falso* or *malitiose*, but for your Fee, and that though there might be *avaritia*, there was not *malitia* in it, it was done by your Profession, you were not Magisterial in it; you thought the consequences that did follow, would not follow. If a Man does but intend to beat a Man, and he dye upon it, you know in Law it is all one: You must understand, there is a malice in the Law; If a man beat one in the Streets, and kill him, though not maliciously in him, but it is so in Law. That you desire to have the benefit of the Kings Declaration; that you did put in your Petition proving the same, that you were a prisoner before, that the Commons in behalf of themselves and the people of *England*, they craved the benefit of it, which was granted, excepting such as should be by Parliament excepted, and that the King should mention a Free Parliament for this, it hath been fully answered to you, & clearly by Mr. *Sollicitor*, that you are not at all concern-

concerned in the Kings Declaration at *Breda*. For first, it is not thing in Law, it binds in honour, and we have given the same directions yesterday upon the like occasion, that is, that the Kings Declaration binds him in honour and in Conscience, but it does not bind him in point of Law, unlesse there were a pardon granted by the Broad Seal, the thing is cleared to you what Parliament the King meant by it, they were sitting at that time, had acknowledged their duties and allegiance to their King, they went *ad ultimum potentia* for a free and absolute Parliament, whilst the King was absent, though the King was a way; yet notwithstanding the King Declared whom he meant, he directed one of those Declarations to our Speaker of the House of Commons, and another to the Speaker of our Peers, in this case it was *loquendum ut vulgus*, it was owned by him as having the name of a Parliament, it was done with great wisdome & prudence, and so as it could be no otherwise, they that were loyal subjects, acting in the Kings absence, he consenting to it, the King owning that Authority, so he was obliged in honour no further then his own meaning & words, but there is another Clause in the Act excludes all these persons. The next thing is this, you say the Statute of 25 *Edward* 3. and it is very true, you say if it be any semblable Treason, we were not to judge upon that, unless they were the Treasons in the Act, and it is most true; now you would urge but this, that this is but a semblable Treason, but you are indicted for the compassing & imagining the Death of the King: if these Acts did not tend to the compassing and imagining the Kings death, I know not what does, I am satisfied you are convicted in your conscience. The next thing (for you have said as much as any man can in such a Cause, it is pitie you have not a better) you say, though it was a Tyrannical Court as it is called, but such a Court it was, and there were Officers you say, it had *figuram judicii*, that aggravates the fact to you, to your profession. There is a difference between a standing Court, and that which is but named to be a Court, this was but one of a day or two's growth before, and you know by whom, by some that pretended to be onely the Commons, your knowledge can tell you that there was never an Act made by the Commons assembled in Parl. alone, and you may find it in my Lord *Cook*, that an Act by the Lords and Commons alone was naught, as appeared by the Records, Sir *James Ormond* was attainted of Treason, the Act was a private Act by the King and Commons alone,

late, the Lords were forgot, when the Judges came to try it, it was void, and another in *Henry* the 6. time; you know this was no Court at all, you know by a printed Authority, that where a setled Court, a true Court, if that Court meddle with that which is not in their cognizance, it is purely void, the Minister that obeys them is punishable, if it be Treasonable matter, it is Treason: if Murder it is Murder; so in the Case of Martial Sea, and in the Common Pleas, if a man shall begin an Appeal of death which is a criminal nature, and ought to be in the Kings Bench, if they proceed in it, it is void; if this Court should condemn the party convicted, and he be executed, it is murder in the Executioner, the Court had no power over such things; you speak of a Court. First, it was not a Court; Secondly, no Court whatsoever could have any power over a King in a coercive way, as to his person, the last thing that you have said for your self, is this, that admitting there was nothing to be construed of an Act or an Order, yet there was a difference, it was an Act *de facto*, that you urged rightly upon the Statute of 11 *Henry* 7. which was denied to some, God forbid it should be denied you, if a man serve the K. in the War, he shall not be punished, let the fact be what it will. K. *Henry* the 7. took care for him that was King *de facto*, that his subjects might be encouraged to follow him, to preserve them, whatever the event of the King was: Mr. *Cook* you say, to have the equity of that Act, that here was an authority *de facto*, these persons had gotten the supream power, and therefore what you did under them you do desire the equity of that Act; for that clearly the intent and meaning of that Act is against you, it was to preserve the King *de facto*, how much more to preserve the King *de jure*, he was owned by these men, and you, as King, you charged him as King, and he was sentenced as King. That that King *Henry* the 7. did, was to take care of the King *de facto* against the King *de jure*, it was for a King and Kingly Government, it was not for an Antimonarchical Government, you proceeded against your King, your own King, and as your King, and called him in your Charge *Charles Stuart* King of *England*. I think there is no colour you should have any benefit of the Letter, or of the equity of the Act. They had not all the Authority at that time, they were a few of the people that did it, they had some part of the Army with them, the Lords were not dissolved then when they had adjourned some time, they did sit afterwards, so that all the part-

particulars you alledge, are against you. The last thing was this, you say, that it having pleased God to restore the King, Judgement should be given for example for terrour to others, that this could not be drawn into example again, why? because by the blessing of God peace was restored, no probability that if your life was spared, that it would be drawn again into example, this is the weakest thing you have urged, you must know the reason; there are things, there is the punishment & example, punishment goes to the present, but examples to the documents of all others; God knows what such things may be in after ages if there should be impunity for them, it would rather make men impudent & confident afterwards: If you have any more to say I will hear you, if not I must conclude to the Jury: You hear the evidence is clear for compassing and imagining the Death of the King, you have heard what he has said, and what he hath done, he has written, and examined Witnesses against the King, that he was by at the drawing of the Charge, where it was drawn, you hear he exhibited this Charge in the name of the Commons assembled in Parliament, and the good People of *England*, and what this Charge is, it is of High Treason and other high misdemeanors, you find that he does complain of delayes, does again and again speak of this Charge, desires it may be taken *pro confesso*, in the close of all, it was not so much he, as innocent bloud, that demanded Justice; this was more then was dictated to him. You have heard the Witnesses, he was perswaded to forbear, acknowledged the King to be a gracious and wise King, The Oaths alledged against him, and you have heard his excuse, I have nothing to say more, I shall be very willing to hear you further: I have not absolutely directed the Jury.

Cook. I do humbly acknowledge your patience in hearing me, and that your Lordships have truly and justly stated both proofs and my answer. If your Lordships are pleased to lay aside these Acts, or Orders, or Authority whereby I did at that time only conscientiously act, and did think that it would bear me out, if you lay aside that, & look upon it as so many men got together without authority, & as well whole that were instrumental, though not sentencers or signers, & that clause in the Act, *I* confess I humbly make bold to say, I have not received satisfaction in my judgement, those very words of *not so much I, as the innocent bloud cries for Justice* were dictated to me, there was nothing at all left to me, because his Majesty did not plead, there was no Tryal, that which I did was according

according to the best, though it may be according to the weakest part of my judgement, I have no new matter.

Lord Chief Baron. You have said no new matter, unless it be worse then before, for now you warrant that Authority.

Cook. Do not mistake me (my Lord) I mean so far as to excuse me in the point of High Treason.

L. C. B. We delivered our opinions, as to that formerly, we were of opinion, that the acting by colour of that pretended authority was so far from any extenuation, that it was an aggravation of the thing, the meeting by that authority was Treason, and in them that acted under them and approving of it, the making of that trayterous pretended Act, making the Proclamation, sitting upon it, they were all so many Treasons: That was the reason why that was urged against you, assuming upon you the power, that was, you approving of their power by acting under them, so that there is nothing more to be said.

Gentlemen of the Jury, you have heard the Indictment was for compassing and imagining the death of the King, you have heard the several Overtacts repeated, and whether these are guilty of Treason to deliver in a Charge against the King, such a one as that was in those words, as against a Traytor, Tyrant, Murderer, and implacable enemy to the Commonwealth in these very words, to desire Judgement against the Prisoner (then the King) at the Bar, angry at delayes, to desire that the Charge might be taken *pro confesso*, to have it expressly, again & again to demand Judgement: if these be not Overtacts of compassing and imagining the Death of the King, & that which hath been said by the Witnesses, it must be left to you, I think you need not goe from the Bar.

Jury went together. Silence is commanded.

Clerk. Are you agreed of of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. The Fore-man.

Clerk. *John Cook*, hold up thy hand, look upon the Prisoner at the Bar, how say you, is he guilty of the Treason in manner and form as he stands indicted, or not guilty?

Fore-man. Guilty.

Clerk. Look to him Keeper.

Clerk. What Goods and Chattells?

Jury. None that we know of.

The

The Tryal of *Hugh Peters* the same 13. of *October*, and at the same Barre.

Clerk of the Crown. SEt *Hugh Peters* to the Barre, he was brought accordingly.

H.P. Hold up thy hand, thou standest Indicted, &c. If you will challenge any of the Jury, you must challenge them when they come to the book, before they are sworn.

L.Ch.Bar. Mr. *Peters*, You may challenge to the number of 35. peremptorily, but beyond that you cannot, without good cause shewn, and you may have Pen, Ink, and Paper.

Peters. *My Lord, I shall challenge none.*

Jury sworn, 12. Sir *Jer. Whitchcot, James Hall, Christopher Abdy, Nich Rainton, Rich. Cheyney, John Smith, Rich. Abell, George Terrey, Charles Pickern, John Nicholls, Francis Derrington, Anthony Hall.*

Cler. *Hugh Peters* hold up thy hand. Look on the Prisoner you that are sworn, &c.

Sir *Ed. Turner* to the Jury. You have often heard repeated to you, that the substantial part of the Charge is the compassing and imagining the death of the King, and all the rest will be but evidence to prove that imagination against the Prisoner at the Barre, whom we will prove to be a principal actor in this sad Tragedy, and next to him whom God hath taken away, and reserved to his own Judgement; and we shall endeavour to prove, That he was a chief Compirator with *Cromwell* at several times, and in several places, and that it was designed by them. We shall prove that he was the principal person to procure the Souldiery to cry out Justice, Justice, or assist or desire those for the taking away the life of the King. He did make use of his profession, wherein he should have been the Minister of peace, to make himself a Trumpeter of war, of Treason and Sedition in the Kingdome. He preached many Sermons to the Souldiery in direct terms for taking away the King, comparing the King to *Barabbas*; He was instrumental when the Proclamation for the high Court of Justice (as they called it) was proclaimed, directing where it should be proclaimed, and in what place. When the King was brought upon the Stage, that Mock-work he

he was the per[illegible] stirred up the Souldiery below to cry for Justice we [illegible] and several times upon several [illegible] ons, still [illegible] to promote this business, the next day [illegible] he commends it; you shall hear all out of the mo[illegible], therefore I say no more, call the witnesses.

[illegible] Dr. *William Young* sworn.

Councell. Tell my Lords and the Jury what the Prisoner at the Barre has declared to you concerning the contrivance of bringing the King to Tryal.

Dr. *Young.* My Lords and Gentlemen of the Jury, It was near about (and that the Prisoner may remember) the moneth of *July* 1648. since we came first acquainted, when he went over to *Ireland* it was about the Siege of Pembrook Castle, but afterwards in the year 1649. we renewed our acquaintance, he went over into *Ireland* with that Usurper the late Protector, as he was called, after the Town of *Wexford* was taken; coming over he fell sick of the flux, and said he received it by infection, praying over Captain *Horton*. Coming into *Milford*, that Captain sends a summons to me, to come on board, that was to fetch this prisoner at the Bar, who was sick. I found him there growling upon the deck, and sick he was indeed, with much difficulty we got him on shore, within a very few dayes, (to the best of my remembrance 5. dayes) I perfected his cure. We became very familiar, I observed in him that he had some secret thoughts that I could not well discover, neither well understand, whereupon I thought it might tend to my security that I should so much sympathize with him, to get within him to know his intentions. After some weeks, (for he continued with me 10. weeks, or near thereabouts, some few dayes rather over then under) we grew so familiar, that at last I found he began to inlarge his heart to me. Many times I should hear him rail most insufferably against the Blood Royal, not only against our Martyred King, but against his Royal off spring, still as we continued our acquaintance, he became more and more open to me, so we would fit up discoursing (till about 12. or 1. of the Clock at night, very often) about these unhappy wars late in *England*. At last, my Lord, I found him, that he began to tell me how he came into *England*, and upon what account he came out of *New England*. I shall desire that in regard his discourses were various, that I may deliver them orderly, they were delivered to me within the compass of 10. weeks, but the dayes [illegible]

[illegible]

more I cannot remember. First he told me (discoursing of *New England* and the Clergy there, and much of the Clergy here in *England*, and of the busines here of Reformation,) he told me that for the doing on of this peece of this Reformation, he was imployed out of *New England* for the stirring up of this war and driving of it on, this I shall say Lord speak to in the first place, and that upon the oath I have taken: and secondly, he was pleased at another time to acquaint me and that by way of complement, complaining then against the Parliament, saying, that sometime after he was come into *Engl.* he was sent over into *Irel.* by the Parl. to receive further instructions to drive on the design, to extirpate Monarchy; saith he, I did dispend a great deal of my own money, yet never had that satisfaction from them which they promised me, that was they promised me 2, or 3000*l.* for my journey, and yet they have given me no more but only a small pittance of land out of my Lord of *Worcesters* estate in *Worcester-shire*, I have seen his letters directed to his kinsman here in *London*, as I take it, his name was *Parker*, advising him for the settleing of this land and selling it. Thirdly, my Lord, I have observed, that by way of vilification of the Monarchical Government, I have found him jocundarily scoffing at it, and would ordinarily quibble in this manner, saying, this Common-wealth will never be at peace till 150. be put down. I asked him what this 150. was, he told me three L's, and afterwards interpreted the meaning to be the Lords, the Levites and the Lawyers, with that said I, we shall be like *Swizers*, *Tinkers* and *Traytors*. Now my Lord, we are come to the last particular, we discoursing thus frequently, & withal he was then a Collonel, and had a Commission under that Usurper *Oliver*, and brought over his Commission for raising of Souldiers to foment that War in *Ireland*; that it was so I appeal to the dictates of his own Conscience, and whether he did not press me very importunately to accept of a Commission of Major or a Captain; he did issue forth two Commissions under his own hand, one of them to bring over from *Devon-shire* two foot Companies unto *Cork*. My Lord, because we were militarily affected, amongst the discourses of our unhappy wars, I know not how it came from him, it being near Eleven years since, and I have had many sufferings incumbent on me, so that I may fail in some particulars, but in generall thus it was: we were discoursing concerning our Martyred King, as then we call'd him, and of his Imprisonment in *Holmby* House, which I wondered at, thus

we discourst, he told me the story how they had used him at *Holmby*, and at last came up to this, when he was taken away from *Holmby* House, the Parliament had then a design to have secured *O. Cromwell* and my self being then in *London*, saith he, we having intelligence of it, escaped out of *London*, and rode hard for it, and as we rode to *Ware* we made a halt, and advised how we should settle the Kingdome in peace, and dispose of the King, the result was this; They should bring him to justice, Try him for his life, and cut off his Head: whether this was the expression of *Cromwel* I cannot tell; but to the utmost of my remembrance, and I am mistaken if it was not the advice of Mr. *Peters* to *Cromwel*, and I believe it, because his former relations of his transactions out of *Ireland* did tend to that effect.

Mr. Sol. Gen. I will ask you this question, we will not press you particularly upon your memory, whether *Cromwell* or *Peters* said the word, do you remember he confessed to you, they were agreed upon that matter?

Young. They did consult and agree upon it.

Peters. *My Lord, I desire to speak a word,* (his voice being so low he was brought to the second Barr.) *I am the bolder to speak to your Lordships at this time a word, and it is high time to satisfie my conscience, if these things were true, there is enough said to destroy me, I desire leave to tell you what offence I take at the witness, this my Lord. This Gentleman I do know*——

Council. What say you to him?

Peters. *That which I have to say is this, that in his story he hath told that which is not true, but I will not finde fault with him, because he was my host, I will not resist and recriminate, but all give your Lordships so simplicity as much satisfaction my self as my witness; this I say to the man that speaks, and this is certain, I did indeed spend some time at this Gentlemans house, he is called there Dr. Young, and my trouble at the discourse is this, I do not know my Lord that I found a more violent man for the Parliament then himself, so far, he undertook to be a spy on one side, this I find to be so, he will not deny it, he was very fierce in that way, I think words of such a man ought to be little attended to. The second is this, this Gentleman is not a competent witness, and that upon a two-fold ground. First, because I know he is under a very great temptation and trouble in this very thing, and it is upon this account, he was put out of his living in the Country, and here he came to me to help him in again, and*

very highly offended because I did not do it. Secondly, it is not that I would invalidate his witness, but give me leave to tell you, it is his way to snap and catch at every man, which is the complaint of the people in his own country. I know that same which is spoken is false, I speak it in the presence of God, I protest I never had any near converse with O. Cromwel about such things. I speak this to the Jury, that they would have a care of the witness, I was in sickness then, those that have known me, do know likewise I have much weakness in my head when I am sick, and to take words that are spoken in a sick condition he ought not to do it, for the words themselves I do here protest against them, for the generality of them, and that he hath been freer in my judgement in any communication this way than I have been; if it is marvellous, here I protest the things untruths, I call God and Angels to witness they are not true. I will give you an account of my whole condition by and by, if I may be heard.

Court. You shall be heard at large, that which you have been heard now, is concerning the competency or incompetency of the witness; the incompetency against him is this, that when you came thither none more violent for the Parliament then himself, and that he was a great spie, and you say it is usual with him to take such courses; these are but words, if you have any witnesses we will hear them, the man may be traduced and slandered, and so all witnesses may be taken away.

Court. Mr. *Peters* if you take this course God knows when this business will end, if you have a mind take pen, ink and paper, and take notes of the witnesses, and make exceptions to them one after another. But interrupting one and so another, we shall never have done.

Young. I do recollect my self of some other conferences between us, as to my being malicious, I know he never did me any wrong, and therefore I cannot be malicious, and as for my reputation, having resided two years in *London*, I can have certificates both from my Country, and some of this City to vindicate me in that particular. But my Lord that which I would inform your Lordship is this, he told me he took Duke *Hamilton* a prisoner himself in his own Chamber, seized on his goods, and took his George and Blew ribband off his shoulder, and this George he shewed me.

Wybert Gunter Sworn.

Council. Mr. *Gunter* what can you say concerning a meeting and consultation at the Star in *Coleman-street*?

Gunter. My Lord, I was a Servant at the Star in *Coleman-street* with

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one Mr. *Hildesley*, that house was a house where *Oliver Cromwell* [illegible] severall of that party did use to meet in consultation: They had [illegible] veral meetings, I do remember very well one among the rest, in particular, that Master *Peters* was there, he came in, in the afternoon about four a clock, and was there till ten or eleven at night: I being [illegible] a Drawer could not hear much of the discourse, but the subject [illegible] tending towards the King after he was a prisoner, for they called him by the name of *Charles Stuart*: I heard not much of the discourse, they were writing, but what I know not: but I guessed it to be something drawn up against the King, I perceived that Mr. *Peters* was privie to it and pleasant in the company.

Court. How old were you at that time?

Gunter. I am now thirty years the last *Bartholomew* day, and this was in 1648.

Court. How long before the King was put to death?

Gunter. A good while; it was suddenly, as I remember, three days before *Oliver Cromwel* went out of town.

Peters. I was never there but once with Mr. Nathaniel Fines.

Counsel. Was *Cromwel* there?

Gunter. Yes.

Counsel. Was Mr. *Peters* there any oftener then once?

Gunter. I know not, but once I am certain of it, this is the Gentleman, for then he wore a great Sword.

Peters. I never wore a great sword in my life.

Mr. *Starky* sworn.

Starky. My Lords, in the moneth of *December* before the King died, in the beginning of that moneth, and so towards the 12. of *January* following, the head-quarters of the Army were at *Windsor*, and Major *Ireton* that is dead (who was a generall Officer of the Army) was quartered in my fathers house there, and by reason of his long residence there, being about two moneths, (his wife was there too) my Lords, this Gentleman Mr. *Peters* be likewise quartered in another place in that town, and *Cromwell* himself was quartered at one Mr. *Bakers* that lay low in the town, so that in truth, my fathers house being near the Castle, and there being in it a large room, and in respect that Mr. *Ireton* was quarter'd there, usually the Council of War sate there: My Lords, I was then in the house constantly, besides the Council of War which did commonly sit there, I did observe the

Gun-

Ireton, and this Gentleman Mr. *Peters*, and one Col. *Rich*, and [illegible] person whose name I have forgot, did usually meet and consult together, and would sit up till two or three of clock in the morning privately together, this was their usual course when their Councils of War sate, Mr. *Ireton* came in to supper, but went out again. There were guards upon them. After this time it happened so, that I was often in Mr. *Ireton's* company, where Mr. *Peters* coming to him was very often at meals there, but especially at nights, by occasion of time.

Mr. *Ireton* being civil in carriage, would usually entertain discourse with Mr. *Peters*, likewise would favour me sometimes with discourse; and in that discourse, I did many times take occasion to assert the laws in point of the King: And discoursing about the King as being a capital instrument in the late Inconveniences, as they call'd it, in the times of the warre, Mr. *Ireton* would discourse this ordinarily: I was bold to tell them, that the person of the King was *solutus legibus*, this Gentleman, the Prisoner at the Barre, told me, it was an unequal law. I did observe Mr. *Peters*, that he did bend his discourse not by way of argument only, but in point of resolution of judgement fully against the Person and Government of the King. I remember some of his expressions were these, That he was a *Tyrant*, that he was a *Fool*, that he was *not fit to be King* or bear that *office*; I have heard him say, that for the Office it self (in those very words which shortly after came into Print) that it was a *dangerous*, *chargeable* and *useless* Office. My Lords, the constant discourse of this Gentleman at that time was such as he did believe would never be called into question, so that it was not a thing that a man was necessitated to observe by an accident, but it was their full and whole discourse. I will put you in mind of a particular passage, When the news came to *Windsor*, that the King was in Prison at the Ile of *Wight*, my father whose house that was, was very much troubled at it; and being an ancient man, was not able to controll his passions with reason, told my mother, that they (meaning Mr. *Ireton*, &c.) should have no entertainment there, and took the key of the Celler and put it in his pocket; his passions being lessoned, Mr. *Ireton* his wife and another Officer being at supper, and afterwards my father said Grace, and as he usually did, though they were there, he said that usual and honest expression, praying for the King in these usual words, God save the

King,

King, Prince, and Realm; sometimes they did laugh at it, but never did reflect upon him, but this night he made this expression, God save the Kings most excellent Majesty and preserve him out of the hands of all his enemies: *Peters* who was then at the Table, turns about to him and said, Old Gentleman, your *last* will not stand long: I do conceive he meant it of the King. For a matter of two moneths of the constant residence and being of the Army there, I did observe that in the general Council there, and in this private Council (after the businesse was broke out, and when the King was taken prisoner and carried to *Windsor*) Mr. *Peters* was the constant man; and when the businesse broke out, I looked upon it in reason that *Cromwel*, *Ireton*, and this Gentleman at the Bar, and *Rich*, and that other Gentleman whose name I have forgot, that they were the persons that did the businesse. My Lords, Mr. *Peters* he continued at *Windsor*, I remember very well, that after the body of the Army, the General and the Officers of the Army were gone to *London*, he continued in *Windsor*: I remember a passage of one *Bacon* who was Secretary, Mr. *Peters* being in discourse of the King, Mr. *Bacon* took great distaste at Mr. *Peters* for some affront put on the King: Mr. *Peters* falls upon him and railes at him, and was ready to beat him: We understood it so, because he did tell him of his affronting the King.

Coun. Mr. *Peters*, If you have any thing to ask this Witness, you may.

Peters. *I have many things to ask him. Did I ever lye there?*

Starky. No.

Peters. *Did you see me there at three of the clock in the morning?*

Starky. I have seen you go up at ten a clock at night to *Mr. Ireton's* chamber, and sometimes I understood you did not go away till four a clock in the morning; I went to bed, its true, but I understood it so.

Thomas Walkeley sworn.

Council. Give your testimony what consultations you have had with the Prisoner at the Bar,

Walkeley. I came out of *Essex* in at *Aldgate*, just as I came in a Proclamation was read for Tryal of his late *Majesty*, I went down the next day to the Painted Chamber at *Westminster*, where I saw *Oliver Cromwel*, *John Goodwin* and *Peters* and others; *John Goodwin* sate in the middle of the table, and he made a long speech or prayer, I know not whether, but *Mr. Peters* stood there: after *John Goodwin* had done his prayer, it was desired that strangers might avoid the room,

(then came up *Cook*, and *Dorislaus*, and *Humphreys*, and *Ask*, and *Dendy*, and several others, and stood by *Bradshaw* at the upper end of the Table) But Cromwel stood up and told them it was not necessary that the people should go out, but that was overruled, and so I went out and staied their rising, and saw this Gent. Mr. *Peters* come out with them. After that, when the King was brought to Town a prisoner, the Lord *Carew*, a very honourable person, meeting with me, saith he, *Walkeley*, if you will see your old Master, go now, or else it may be you will never see him. Where is he my Lord? said I, saith he, he is coming on this side *Brainford*. I went to the farther end of *St. James* Corner, and there I met some of the Army coming, and then I saw his Majesty in his Coach with 6. horses, and *Peters*, the Bp. *Almoner* riding before the King triumphing, then after that, in *St. James-Park*, I saw *Peters* marshalling the Souldiers, and I was forced to go about. My Lord, this is all I can say concerning that, I remember one thing further of him, I heard him in *Westminster-hall* say, within a year or two after the Army was raised, *If we can keep up our Army but seven years longer, we need not care for the King and all his posterity.*

Mr. *Proctor* sworn.

Pr. I having occasion to go from *London* to *Windsor*, the day that the King was brought from thence a prisoner, a little on this side *Brainford*, I saw great troopes of horse, I did conceive what the cause was, having heard the King was to be brought up to his tryal, after I had passed some number of horses, at last I espied the prisoner at the Bar immediately before the Kings Coach, singly riding before the Coach horses, and the King sitting alone in the Coach. My Lord, I did put off my hat, and he was graciously pleased to put off his hat, the Troopers seeing this, they threw me into the ditch horse and all, where I staied till they passed by, and was glad I escaped so.

Hardwick sworn.

Counsel. When the Proclamation was read in *Westminster* hall for tryal of the King, did you see Mr. *Peters* there?

Hard. I was in the hall when that ugly Proclamation was proclaimed, where I saw *Dendy*, *King*, and that Gent. the prisoner at the Bar in the hall; After the Proclamation was proclaimed, the prisoner at the Bar came out into the Palace-yard and told them, *Gent. saith he,* (*a great many Officers Souldiers being there*) *all this is worth nothing*

thing unleſs you proclaim it in Cheapſide, and at the Old Exchange.

Councel. Explain your ſelf, what Proclamation do you mean?

Har. The Proclamation for the high Court of Juſtice.

Holland Simſon ſworn.

Coun. What do you know concerning the priſoner at the Bar?

Simſon. I do know Mr. *Peters* very well, I have known him theſe 12. or 13. years. When the high Court of Juſtice was ſitting, both in the Court and painted Chamber I ſaw this Gent. in conſultation there and at ſeveral other places, at Sr. *William Brereton*, and other where.

Coun. Did you ſee him at the tryal?

Simſon. I ſaw him, but not as a judge, There was one day in the Hall Collo. *Stubbards*, who was Adjutant General (he was a very buſie man) and Collo. *Axtel.* Mr. *Peters* going down the ſtaires, comes to him and bids *Stubbards* to command the Souldiers to cry out *Juſtice, Juſtice, againſt the Traytor at the Bar.*

Coun. Who did he mean?

Sim. The King was at the Bar at the ſame time, whereupon my Lord, the Soldiers did cry out upon the ſame, and as the King was taken away to Sr. *Robt. Cottons*, ſome of them ſpit in the Kings face, but he took his handkercher, wiped it off and ſmiled.

Peters. *I do not know this Gent. did he ever ſee me?*

Simſ. Yes, divers times in the Painted-Chamber, at Sr. *William Brereton*, at the Deanery in conſultation with *Bradſhaw*, and you were admitted and no man elſe as I know, unleſs Sr. *Will. Brereton* who came along with you.

Thomas Richardſon ſworn.

Richardſon. My Lords, the firſt day that this Court of Juſtice (as they called it) did adjourn, I went up into the Court, and I ſaw the Priſoner at the Bar with ſome more ſtanding in the Court, and I came and ſtood cloſe by him, and ſome with him whom I did not know, I heard him commend *Bradſhaw*, the carriage of him in the tryal of the King, and another, *Cookes* carriage: to be ſhort, Mr. *Peters* holding up his hands, ſaid, *this is a moſt glorious beginning of the work.*

Sir *Jeremy Whitchcot* Sworn.

Wh. My Lords, I have by accident, not by choice been ſeveral times in Mr. *Peters* company, truely I have heard him ſpeak very ſcurrilouſly of the King, among the reſt, he was making ſome kinde of Narration of *Crom.* making an eſcape, and that he was intended to be ſurprized, *that if he had not preſently gone away, he had been clapt up in the Tower and declared a Traytor, he ſaid there was a meeting of the Officers of the Army, where he uſed this expreſſion; And there we did reſolve to ſet aſide the King.* My Lord, after this (it was at another time) he was ſpeaking of that they called the High Court of Juſtice, and I do very well remember this was his expreſſion of it, I cannot but look upon this Court with a great *reverence*, for it doth reſemble in ſome meaſure the tryal that ſhall be at the end of the world by *the Saints.* This is all that I perfectly remember. It was a great while agoe, I cannot ſpeak more punctually, I have ſeldome heard him ſpeak of the King, but of the Tyrant, I remember one time he was ſaying he would have preached before the King, but ſaid he, *the poor wretch would not hear me,*

Rich. Nunnelly Sworn.

Counſel. Was *Peters* upon the Scaffold at the time of Execution or before?

Nun. On that unhappy day 30. *Jan.* 1648. This *Hugh Peters* came an houre before the King came to *Whitehall*; I came with a warrant of 40. or 50000. l. to *Oliver Cromwel* being door-keeper to the Committee of the Army, *Nunnelly*, ſayes *O. Cromwel*, will you go to *Whitehall*? Surely you will ſee the Beheading of the King, and he let me into *Whitehall*, coming into the boarded Gallery, I met *H. Peters*, and he was in the Gallery, and then I got with *H. Peters* into the Banqueting-houſe, being there, *H. Peters* met one *Tench* of *Hounsditch* that was a Joyner, meeting him, he ſpeaks to him and whiſpers in his ear and told him ſomewhat, I do not know what it was, but *Tench* preſently after went and knocked 4. ſtaples upon the Scaffold, I meeting *Tench* again, what art thou doing ſaid I? what will you turn hangman? ſayes he, this day will be a happy day; ſaid I, pray God ſend it be not a bloody day, upon that *H. Peters* went upon the Scaffold juſt an houre before the King came, and then he went off again, I watched

at the window, when the Kings head was cut off, and afterwards I saw the Vizards going into a Chamber there, about an houre afterwards (I staying there at the Door) there comes *H. Peters* in his black Cloak and broad Hat out of that Chamber (as *I* take it) with the Hangman, *I* am sure *I* did see him go along with the Hangman to take water; this is all I can remember, it being many years since.

Peters: *I humbly beg I may be heard in this case, I have here a witness, and desire he may be examined; it is noised I was upon the Scaffold, I here call God to witness, I was not out of my Chamber that day, I was sick that day, I speak in the presence of the Lord.*

Court. If your witness will stay he shall be heard, there are more witnesses to the same thing, and so he may speak to all together.

Dr. *Mortimer* Sworn.

Mortimer. Me Lar, me ha serd de King, &c.

Court. We cannot understand a word.

Councell. He is a Frenchman, my Lord.

Court. Pray let there be an interpreter.

One Mr. *Young* was sworn to interpret truly his evidence.

But it being afterwards found difficult and troublesome, the Councel waved his evidence, and prayed another witness might be called.

Dr. *Mortimer.* Me Lar, me can peak Englis —

Councel. No, no, pray sit down, we will examine other witnesses, call *Stephen Clough.*

Stephen Clough Sworn.

Councell. What do you know of *H. Peters?*

Clough. My Lords and Gentlemen of the Jury, in 1648. I heard of a meeting of the Councell of Officers at *Westminster*, I think in the Painted Chamber, and I willing (my Lord) to hear what their consultations were, I went thither, and was there as one of them, (but I was not one,) amongst the rest *H. Peters* was one, when the room was pretty full the door was shut, Mr. *Peters* desired to call for a blessing upon their businesse, in his prayer he uttered these words, O Lord, (saith he) what a mercy it is to see this great City fall down before us; and what a stir is there to bring this great man to tryal, without whose blood he will turn us all into blood if he reign again.

Peters: *What day was this?*

Clough.

Clough. It was about three weeks or a month before the King dyed.

Peters. *Where was this?*

Clough. In the Painted Chamber.

Peters. *You have been very bold.*

Clough. I speak it upon my oath.

Peters. *How long was this ago?*

Clough. In 1648.

Peters. *How many years since is that?*

Clough. You know your self sure how many years since 1648.

Peters. *How long before the King dyed do you say?*

Clough. About three weeks or a month before the King was murdered.

Councell. We shall call a witness to prove, that in *December* 1648. there was a solemn fast appointed to seek God in what they were about, and Mr. *Peters* was appointed to preach before them.

Mr. *Beaver* Sworn.

Mr. *Beavers* Evidence. My Lord, and you Gentlemen of the Jury, upon a day that was appointed for a Fast for those that sate then as a Parliament, I went to *Westminster* to find out some company to dine with me, and having walked about an houre in *Westminster* Hall, and finding none of my friends to dine with me, I went to that place called Heaven and dined there; after I had dined, I passed through Saint *Margarets* Church-yard to go home again, (I lay in the *Strand*,) I perceived all the Church-yard full of Muskets and Pikes upon the ground, and asked some Souldiers that were there, what was the businesse? they told me they were guarding the Parliament that were keeping a Fast at St. *Margarets*; who preaches said I? they told me Mr. *Peters* is just now gone up into the Pulpit, said I, I must needs have the curiosity to hear that man, having heard many stories of the manner of his preaching, (God knows I did not do it out of any manner of devotion) I crouded near the Pulpit, and came near the Speakers Pew, and I saw a great many of the Members there, whom I knew well: I could not guess what his Text might be, but hearing him talk much of *Barabbas* and our Saviour, and insisting altogether upon that, I guessed his Text was that passage, wherein the Jews did desire the release of *Barabbas* and crucifying of Christ; and so it proved, the first thing

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I heard him say was, *it is a very sad thing that this should be a question amongst us, as among the old* Jews, *whether our Saviour Jesus Christ must be crucified or that* Barabbas *should be released, the oppressor of the people: O Jesus,* said he, *where are we, that that should be a question amongst us?* sayes he, *And because that you should think my Lords and Gentlemen, that it is a question, I will tell you it is a question; I have been in the City, which may very well be compared to* Hierusalem *in this conjuncture of time, and I professe those foolish Citizens for a little trading and profit they will have* Christ (pointing to the *Redcoats* on the pulpit stairs) *crucified, and that great* Barabbas *at* Windsor *released,* sayes he, *but I do not much heed what the rabble sayes: I hope,* sayes he, *that my brethren of the Clergy will be wiser, the lips of the Priests do use to preserve knowledge, I have been with them too in the assembly, and having seen and heard what they said, I perceive they are for crucifying of Christ and releasing of* Barabbas, *O Jesus, what shal we do now?* with such like strange expressions, and shrugging of his shoulders in the Pulpit.

Councel. How long was this before the King was murdered?

— It was a few dayes before the house of Commons made that thing called, An Act for his Tryal.

Councel. What did he say to the Members?

— I am coming to it, sayes he, my Lords and you noble Gentlemen of the House of Commons, you are the Sanhedrim and the great Councel of the Nation, therefore you must be sure to do Justice, and it is from you we expect it; you must not only be inheritours of your Ancestors, but you must do as they did, they have opposed Tyrannical Kings, they have destroyed them, it is you chiefly that we look for Justice from. Do not prefer the great *Barabbas, Murderer, Tyrant,* and *Traytor* before these poor hearts (pointing to the *Redcoates*) and the Army, who are our Saviours, and thus for two or three houres time that he spent, he did nothing but rake up all the reasons, argument and examples he could to perswade them to bring the King to condigne, speedy and capital punishment.

Peters. *I do not know you, are you sure you saw me at that time? Do you know me?*

— Yes Sir.

Peters. *I did not preach there at that time.*

Councel. Pray my Lord will you call Mr. *Jessop*, who hath the Re-

cord

cords of the Parliament, and can produce the Order, whereby you were appointed to carry on the work of that Fast, there was the Order for his preaching, and Order for thanks for his work.

Mr. Jessop produced the Journal, wherein was the Order following, which was read.

Cla. *reads*, Die Jovis 7. Septemb. 1648. *Resolved that there be a day of publick Humiliation, for this House to seek God in these times of difficulty, and that to morrow be the day and kept here in this House. Resolved that Mr.* Peters *Mr. Marshall and Mr.* Carill *be desired to perform the duty on the day of Humiliation with the House to morrow.*

Councell. That is not it we intend, there was one after that in *December* 1648.

Clar. *reads.* 20 Decemb. 1648. *Ordered that Mr.* Peters *be desired to preach on Friday next, the day of publick Humiliation at Margarets* Westminster, *in the place of* ——

Councell. Call *Mr. Chase.* After this the work went on, and the High Court of Justice sate; and the first day they sate was Saturday the 20. *Jan.* in *Westminster* Hall, the 21. being the Sunday following, I think this Gentleman was at *Whitehall*, he will tell you what he preached.

Mr. *Chase* sworn.

Chase. My Lord, I heard the Prisoner at the Barr preaching before *Oliver Cromwell* and *Bradshaw*, who was called Lord President of the high Court of Justice, and he took his Text out of the *Psalms*, in these words, *Binde your Kings with chains, and your Nobles in fetters of iron*; that was part of the Text: But sayes he in his Sermon, Beloved, it is the last Psalm but one, and the next Psalm hath six verses and twelve Hallelujahs, Praise ye the Lord, Praise God in his sanctuary, and so on; for what sayes he? look into my Text, there is the reason of it, That Kings were bound in chains, *&c.* He went on with a story of a Major and a Bishop and his man, the Bishops man saith he, being drunk, the Major laid him by the heels, the Bishop sends to the Major, to know by what authority he imprisoned his servant, the Majors answer was, there is an Act of Parliament for it, and neither the Bishop nor his man are excepted out of it: and applyed it thus, Here is saith he, a great discourse and talk in the world, what? will ye cut off the Kings head, the head of a Protestant Prince.

Prince and King? turn to your Bibles and you shall finde it there. *Whosoever sheds mans blood, by man shall his blood be shed*, saies he, I will even answer them as the Major did the Bishop, here is an Act of God, Whosoever sheds mans blood, by man shall his blood be shed; and I see neither *King Charles*, nor Prince *Charles*, nor Prince *Robert*, nor Prince *Maurice*, nor any of that *rabble* excepted out of it. And further he said, This is the day that I and many saints of God besides have been praying for these many years.

Peters. *Ask him whether he took notes.*

Chase. No Sir, but it being so memorable a Sermon, I took speciall notice of it, I came to my Brothers house at *Shoolane*, and told him; said I, Brother, I have been at *Whitehall*, and have heard the most execrable businesse that ever was heard in the world by a Minister of the Gospel, and I told him the words; I observed that *Oliver Cromwell* did laugh at that time when you were Preaching.

Tho. Tongue sworn.

Councel. What do you know of the Prisoners preaching?

Tongue. Upon *Jan.* 21. 1648. I was at *Whitehall* where this Gentleman preached, and he preached upon this Text, 149. *Psal. v.* 8. To bind their Kings in chains, and their Nobles in links of iron, in which Text this *Peters* did much applaud the souldiers there, he said he hoped to see such another day following as the day before, and that blessed be God (saies this Parson *Peters*) the House, the lower House is purged, and the House of Lords themselves they will down suddenly, this is all that I well remember at that time. Upon the 28. of *Jan.* 1648. next day after sentence of the King, I heard *Peters* preach upon this Text in S. *James's* Chappel, 149. *Psal.* 6, 7, 8, 9, verses. *Let the high praises* of God be in their mouth, and a two edged sword *in their hands*, to execute vengeance upon the heathen, and punishments *upon the people*, To bind their Kings with chains, and their Nobles with *fetters of Iron*, *To execute upon them the judgement written, this honour* have all his Saints, praise ye *the Lord*: And there he did so taint the Redcoats, and so reprobate the poor Kings friends. And in the middle of his Sermon he took occasion to produce a Text 14. Esay 18, 19, 20, *All the Kings of the Nations even all of them lie in glory, every one in his own house. But thou art cast out of thy grave like an abominable branch, and as the raiment of those that are slain*

slain, thrust through with a sword, that go down to the stones of the pit as a carcasse troden under feet. Thou shalt not be joyned with them in burriall, because thou hast destroyed thy land, and slain thy people, the seed of evil doers shall never be renowned: saies he, This I did intend to insist and preach upon before the poor *wretch*, and the *poor wretch* would not hear me.

Councel. Who did he mean?

Tongue. His Majesty, who was the day before condemned, saith he, look in your lesser Bibles, and you shall finde the title is, *The Tyrants fall.*

Councel. That that was spoken of the King of *Babylon*, the ignominy that was cast upon him, he applies it to the King of *England.*

Peters. *Ask him where it was?*

Tongue. It was in S. *James's* Chappel, Sunday the 28. of *Jan.* 1648. in the forenoon.

Reynold Bowdler sworn.

Bowdler. That which I have now to say is this, I did hear him a few dayes before the King was murthered, preach in *S. Sepulchers* Church, there he compares the King that was then to dye to *Barabbas* a murderer, and in this manner, Saith he, there is a great company amongst us, like the Jews, they cry out, Let *Christ* be crucified, and let *Barabbas* be released, still comparing the King to *Barabbas* the murtherer, these were his words, with many more to the same purpose.

William Ryder sworn.

Councel. Speak what you know concerning the Prisoner.

Ryder. I was at the same time at Church in *S. Sepulchres.*

Councel. How long was that before the King dyed?

Ryder. It was very near the Kings death.

Councel. Was it after the High Court of Justice sate, as they called it?

Ryder. About that time it was. My Lord, assoon as ever he had read the words of his Text, which was, *He shall call his name Emanuel*, he presently shook hands with his Text, and fell (as he was wont) to news, and there he said, the great inquiry now is to know

what ſhould become of the King, let that alone, ſaith he, and preſently he falls to it again, and was pleaſed to ſtile the King *Barabbas*, ſaith he, there is a great many of people had rather *Chriſt* ſhould be crucified then *Barabbas*, and here he was applauding the Souldiers, and ſaid that *Emanuel* was written upon the bridles of their horſes, and he was ſpeaking of the Kings Souldiers, ſaith he, I have known eighty thouſand of them, and not one of them a gracious perſon.

Councel. Now we expect the Anſwer of the priſoner at the Bar, the Indictment hath been fully proved.

Peters. *I deſire that witneſs may be admitted which I ſpoke of, his name is* Cornelius Glover.

Councel. We have omitted one evidence, we deſire Maſter *Walker* may be called.

Mr. *Walker* ſworn.

Walker. One Sunday after the King was firſt brought to his tryal, out of curioſity, I went to hear Mr. *Peters* at *Whitehall*, after he had made a long prayer, ſaith he, I have prayed and preached theſe twenty years, and now I may ſay with old *Symeon*, *Lord now letteſt thou thy ſervant depart in peace, for mine eyes have ſeen thy ſalvation*, Afterward he ſpeaks of the Text, of *binding their Kings in chains*, &c. then much reviled the King: but ſoft there, ſaith he, I muſt not talk ſo here, I am in the Kings Chappel: there is a very remarkable paſſage in *Amos*, *Amos* went to preach, and *Amazia* would not let him; but *Amos* would preach, the *poor wretch* would not hear me, but yet I will preach. Afterwards he ſpeaks of the *Major* of *Exeter* that committed the Biſhops ſervant for beink drunk, ſaith the Major, here is an Act of Parliament for it, and I do not ſee that the Biſhop nor his man are either of them excepted out of the Act: and ſaith he, in Scripture it is ſaid, *Whoſoever ſheddeth mans blood, by man ſhall his blood be ſhed*; and I do not finde that either King *Charles*, Prince *Charles*, Prince *Rupert*, Prince *Maurice*, or any of that rabble are excepted.

Councel. Now Mr. *Peters* you may call your witneſs.

Cornelius Glover, not ſworn.

Lord chief Baron. Where do you dwell?

Glover. In *Pauls* Church-yard.

Lord.

Ld. Chiefe Barron. What is your quality of life?

Peters. *A servant of the Kings.*

Ld. Ch. Barron. I do not ask you Mr. *Peters.*

Glover. I belong to the Post-house.

Peters. *Pray hear him speak.*

Ld. Ch. Barron. What would you have him asked?

Peters. *Whether* I *was out of my Chamber that day the King suffered?*

Ld. Ch. Barron. What say you to that?

Glover. I was come to Mr. *Peters* a little before that time to live with him as his servant, it fell out that day he was ill in his chamber all the morning, the Souldiers in S *James's*-house were all gone away, I had a desire to go see the meeting where they were at *Whitehall*, saith he, thou seemest to have a great desire to go and look about thee, it is very sad, but if you will go you may. I did go over the Park.

Councell. What time?

Glover. About noon.

Councel. What houre?

Glover. I do not know. I did not stay there, the souldiers and the people fill'd the place, and I went back again to the Chamber, I came back again within a matter of an houres time.

Councel. Was the King dead before you came back again?

Glover. They said he was not, when I went home he asked me what was doing? I told him there was a great crond, I could not come near: I staid there an houre, and then went out again, and still there was a croud, and I came back again and Mr. *Peters* was in his chamber then.

Councel. Was he in bed, or up?

Glover. I do not remember.

Councel. How old were you then?

Glover. I am not above 32. or 33.

Councel. Was Mr. *Peters* sick?

Glover. Yes, He was melancholly sick, as he used to be.

Ld. Ch. Barron. How long have you been at the Post-office?

Glover. About five years.

Ld. Ch. Barron. Mr. *Peters* have you any more to ask him?

Peters. I *brought him to testifie that* I *was not out of my Chamber that day, and that* I *was sick.*

L. chief B. Did you desire to go, or did he send you?

G. I did desire to go being newly come to *London.*

L. chief B. This Gent. though not upon oath is examined, and it is onely to one particular, nothing at all to the main proofes.

Peters. *I bring him onely to vindicate my self from that aspersion of my being upon the Scaffold.*

L. chief B. They do not lay the weight of their evidence upon that. The Kings Councel have done with their evidence, if you have any thing to say, you have your liberty.

Peters. *May it please your Lordships, I will give you an account of the business, I lived* 14. *years out of* England, *When I came over I found the wars begun, I began no war, my Lord, nor have been the Trumpeter, when I came out of the West Indies, I fled from the war into* Ireland, *to the Western part there, and it was after the Rebellion when some of the* Irish *had been stirring there, I went and spent my time there. I was neither at* Edge-hill *nor* Naseby, *but my Lord, after I came over there was wars, that the people were engaged in, I was not here in the beginning of it, but was a stranger to the carriage of it, When I came into the Nations I looked after three things, one was, that there might be found Religion, The second was, that learning and Laws might be maintained, The third, that the poor might be cared for, and I must confess I have spent most of my time in these things, to this end and purpose; there was a noise in all parts of some miscarriages in matters of Religion, after it was setled I lived in* Ireland, *I must profess for my own part solemnly that my carriage hath been upon these heads. For Religion I have, through Gods mercies, spoke the truthes of the Protestant Church, upon this account I did stay to see what God might do, I was sent over to his Majesty that we might have a little help in point of Excise and Customes and encouragement in learning. My Lord, this is true, that I being here in the Nation, and being sent over upon the occasions of the Countrey, and not upon any designe, but this I say, (I cannot deny it) that after I came over, and had seen the state of* England, *in some measure I did stir, but by strong importunities, the Ministers of* London *deeper then I: I am very sorry to hear of my carriage towards the King, it is my great trouble, I beg pardon for my own folly and weakness, I thought God had a great controversie with the Nation, and the Lord was displeased on all hands, that which some people took to, I did take unto, I went into the Army, I saw at the beginning of it, that corruptions grew among them, I sup-*

pose

pose none can say I have gone aside from any Orthodox truth of the Lord: And now to take off the scandal upon me, and to the business, let me beg of your Lordships to consider whatever prejudices or revenge may take up mens hearts, there is a God that knows all, God hath a regard to the people of England. I look upon this Nation as the Cabinet of the world, That that doth concern the business is this, my Lord, that after this time hither I came, and did bear witnesse to all the world that there was amongst us something that was for better, and some thing worse for the Nation, I took advice of some great persons concerning the weightinesse of it, I had neither malice nor mischief in my heart against the King, upon this I did ingage so far as being invited, I went into the wars, and there I found very strange and several kinds of providences, as this day hath been seen; I do not deny but that I was active, but not to stir in a way that was not honorable. I challenge a great part of the Nations to manifest my carriage among them, I shall make it good divers wayes, I had so much respect to his Majesty particularly at Windsor, that I propounded to his Majesty my thoughts three wayes to preserve himself from danger, which were good as he was pleased to think, though they did not succeed, and the work died; as for malice, I had none in me. It is true, there was a difference amongst us, an Army and an Army, I never had a groat or a penny from O. Cromwel since I knew this place, I profess I have had no ends for honour or gain, since I set foot upon this shore, I challenge any man that belonged to that party, whether they had not the same respect from me as my own party, I have not persecuted any with malice, I will onely take off malice.

Ld. C. B. Your businesse is matter of fact.

Peters. I am unskilful in Law, this that I offer, is to shew that I had no malice in me, I was so far from malice, that I have a Certificate, of worth the reading, from one of the Eminentest persons in the Nation, to shew I had no malice. It is concerning the Marques of Worcester under his Ladies hand, beginning with these words, I do here testifie that in all the sufferings of my husband, Mr *Peters* was my great friend &c. I have here a seal, (and that produced it) that the Earl of Norwich gave me to keep for his sake, for saving his life, which I will keep as long as I live.

Lchief B. I am not willing at all to interrupt you, or hinder you, that which you speak of doing good services is not at all to the point, we do not question you for what good you have done, but for the evil you

you have done, I hope there is no malice in your heart, nor upon the Court nor Jury, we and they are upon our oaths, you hear the matter alledged againſt you, pray come to the matter.

Peters. *My Lord, I cannot remember them.*

Lord chief Baron. Then I will remember you, you are charged by this Indictment for compaſſing and imagining the death of the King, and there is ſet forth ſundry particulars to prove the overtfact, that you with other perſons named in that Indictment did conſult and meet together, how to bring about the Kings death. Then you are charged with ſeveral Acts of contriving and endeavouring the Kings death. Overtacts that tend to the compaſſing or imagining the Kings death, or any one of theſe, to encourage the bringing on the King to his death, the conſulting or meeting together about it, though you did not ſit or ſentence; yet if you did any thing tending to that incouragement, or otherwiſe abet it, comfort or any wiſe aide thoſe trayterous perſons that did it; in the doing of it you are by law guilty of the whole fact: the propoſing and determining the King ſhall die, though you were not he that actually put him to death, yet notwithſtanding, if you did the other, you are guilty of all; if you ſhall ſpeak any ſeditious ſpeeches, be they in the Pulpit or out of the Pulpit, if you ſhall utter any thing that tends to ſedition, theſe are open acts which prove the imagination of the heart, though imagination of the heart be Treaſon, yet it cannot be proved but by open acts, yet the imagination it ſelf is Treaſon; firſt you did conſpire, all the witneſſes go along to prove this. Dr. *Young* ſaith, you came over from *Ireland* to his houſe, and after five dayes that you were recovered of the Flux, you ſtaid there Ten weeks, you ſaid your ſelf there was enough if it were true, to condemn you or any man: I ſhall repeat it to you, you told him a narrative, that you came from *New England*, from thence to *Ireland*, and then you came to *Holland* with an intent to ſee how you might bring on the Kingdome to be a Commonwealth: next he ſaith, you ſpake very often againſt the King by way of diſgrace againſt him and his family, againſt the King and his off-ſpring, this you ſaid very often: then you ſpake in vilification of Monarchical Government, that this Commonwealth would never be at peace till 150 or three L's, Lords, Levites and Lawyers were taken away, at which he replyed, then they muſt be all *Switzers*, Tinckers

or Traytors; he swears you were a Collonel, and had a Commission; that you would have had him accept of a Commission, and that you had two Companies come from the West, you told him the Parliament had an intent to secure *Cromwel* and your self, but that you rid hard for it, and then you confessed you agreed then upon his death, to bring him to tryal, and to cut off his head; you did agree together, and he believes it was your advice to *Cromwel*; your answer was this, that he was more violent then your self, that he took upon him to be a spie, and that he was no competent witnesse, because he was under a temptation, because you did not help him to his living, and so conceived it to be malice; you say, he was used to take up such courses in his own Country, the matter is not whether you had malice to the Kings life or Monarchy. For the next, one *Gunter*, he swears, that he was Servant to Mr. *Hildesly* at the Star in *Coleman-street*, and this was in 1648. he saith, that many of the party of *Cromwel* did use to resort thither, among the rest he saw you, he said he came in to them, and their discourse was about *Charles Stewart*, and the Prisoner— and did guess it was about the King, that you were privy to it then; he saith, this was three dayes before *O. Cromwel* when out of Town, the effect of that is urged no further then this, that you were so far of the Cabal, that you were present with those persons, *Cromwell*, *Ireton*, *Rich* and others; you said, I was there once with Mr. *Nathaniel Fines*: *Starkey* he saith, that at his fathers house *Ireton* lay, and was quartered there at *Windsor*, before and when the King was Prisoner; that you had your quarter there, and *Cromwell* too in that Town: The general meeting of the Councel of War was at his Fathers house, there *Ireton* and his wife lying there, you came and resorted thither very often; he saith then, that it appeared that after the Councel of War had done, many times *Rich*, and you, and *Cromwell* and *Ireton* were there together, sometimes till two a clock in the morning; he saith then, that he did observe there was a fifth person, (he did not remember his name) and you sate up usually till two or three in the morning, you had guards about you; he saith further, that *Ireton* being a Domestick; he often discoursed with him, and you came sometimes to be there too, that there being some discourse concerning the K. many times he did assert the Law concerning him, that he was *solutus legibus* as to his person; that you should say, that it was an unequal law, and that you did then discourse fully against the Kings Government: you

said

ſaid he was a Tyrant and not fit for that office, that the office was uſeleſs, chargeable and dangerous; theſe very words he obſerved, which afterwards were printed, when they took away Monarchy. He ſaith further, that was their full and whole diſcourſe; he ſaith, that his Father at Supper uſed to ſay that uſual Grace, *God ſave the King, Prince and Realm*, but afterwards, that he heard the King was made a Priſoner, that his Father altering the Grace, he ſaid, *God ſave his moſt Excellent Majeſty, and deliver him out of all his Enemies hands*, you roſe up, and ſaid, old Gentleman your Idol will not ſtand long. That he did obſerve you often with them; he ſaith further, when *Bacon* was coming out, and ſpeaking ſome words concerning your frequent affronting the King, you took up a ſtaffe and were ready to beat him, and made an uproar: it appears alſo of your being privy to *Cromwells* actions; the next witneſs is *Walkeley*, and he ſweare this againſt you, that he was in the Painted Chamber the next day after the Proclamation was made, and there he ſaw *John Goodwin* and You, and there was an aſſembly, and at the middle of the table *John Goodwin* was, and made a long ſpeech or prayer, that *Cromwell* would have had the people ſtay there, but it was ordered they ſhould be turned out, at the end he ſaw you come out with the reſt; there it appeared you were in the conſultation; he ſaith, he met the Army at *St. James's*, and there, when they were half paſt, he ſaw the King in his Coach, and there he ſaw Mr. *Peters* like Biſhop Almoner riding immediately before the King; and at *St. James* Park he ſaw you marſhalling the Souldiers, that he was forced thereupon to go about; he ſaith further, that within a year or two after the Army was raiſed, he heard you ſay theſe words, if we can keep up our Army ſeven years longer, we need not care for the King and all his poſterity.

Peters. *My Lord, I muſt deny abundance of this, the King commanded me to ride before him, that the Biſhop of* London *might come to him.*

L. chief B. But this was three weeks after —— The next witneſs againſt you is one *Proctor*, he ſaith, that day (as the other witneſs did) he ſaw you riding juſt before the Kings Coach, and becauſe he did his duty the Souldiers threw him horſe and all into a ditch. The next witneſs is one *Hardwick*, he ſaith, that when the Proclamation was read, he ſaw you in *Weſtminſter* Hall, and that you ſaid, they had done as good as nothing, unleſs it was proclaimed in *Cheapſide*, and at the

bia

the old Exchange, this you said to some of the Officers there.

Peters. *My Lord, I cannot acknowledge it.*

Ld. Ch. Bar. The next witness against you is *Simson*, he swears he saw you in consultation with *O Crom.* and take Sir *William Brereton* by the hand, and come to *Bradshawes*, and this during the time of the Kings Tryal, he saith further, that one day when the King was at his Tryal you commanded Collonel *Stubbers* to bid his Souldiers cry out, Justice, Justice, which they cryed, and afterwards some of the Souldiers spit upon the King.

Peters. *I do believe that he that swore that, cannot say I was there.*

Another witness is one *Richardson*, who saw you the first day in the Court; and he said further, that you commended *Bradshaw* and another, to wit *Cook* for their carriage in the tryal of the K. That you held up your hands, and said, this is a most glorious beginning of the work.

Peters. *Where abouts in the Court?*

Richardson. In the body of the Court, called then the High Court of Justice.

Peters. *My Lord, I do not know that ever I was in the body of the Court.*

Ld. Ch. Bar. The next witness is Sir *Jeremy Whitchcot*, he saith, he heard you often speak scurrilously of the King, and making a Narrative of *Cromwels* escape, you said there was a meeting, and *there we resolved to set aside the King*; remember what the other witness said; we agreed, and here we resolved: you said, I cannot but reverence the High Court of Justice, it doth resemble the judging of the world at the last day by the Saints, so it was the Saints that sate there: I would have preached before the wretch, but the poor wretch would not hear me: you often call'd him Tyrant, I cannot possibly remember the place, things or words that are alledged. Then you have another witness *Nonnelly*, he saith, he came with a warrant to *O. Crom.* for some money, and that he should say, go and see the beheading of the King at *Whitehall*, he saith, there he met with you, (though you said you were not there that day) going to the Banqueting house, that you spoke to *Tench* and whispered in his ear, and that *Tench* went and knockt Staples on the Scaffold; he meeting *Tench* said, what are you a Hangman? saith *Tench*, this day will be a happy day; he saith, after all this *Hugh Peters* was upon the Scaffold, and that he went out with the Hangman——

Peters. *I do profess to your Lordships before Angels and men, that I did not stir out of my Chamber that day.*

Lord Chief Baron. The Councel doth not put relyance upon that, because of what your witness saith, though his evidence is not at all satisfactory. The next is *Clough*, and he swears this, that he saw you in the Painted Chamber with the Councel of Officers, and there you desired them to call on God for a blessing upon their business, and there you said, O Lord what a merey it is to see this great City fall down before us, and what a stir is there to bring this great man to tryal, without whose blood he will turn us all into blood if he raigne again, and this was about a moneth before the King was murthered.

Lord chief Baron. You hear it Mr. *Peters.*

Peters. *Some part I did, but it is impossible for me to bear down many witnesses, indeed my Lord, I say this, they are marvellous uncharitable, and speak many false things.*

Lord Chief Baron. The next is this, the testimony concerning several Sermons of yours; and let me tell you, the Pulpit ought not to be a place where men with impunity may speak any thing, what they list of Sedition and Treason.

Peters. *I am of the same judgement my self, my Lord.*

Lord Chief Baron. And there was a solemn day to seek God, then you preached at St. *Margarets* Church, this was Mr. *Bever*, in he came and heard you talk much of *Barabbas* and our Saviour, there you fell upon this, speaking of the King; it is a sad thing that it should now be a question, whether we should crucifie our Saviour Jesus Christ, or that great *Barabbas*, speaking of the King; you call'd him Traytor, Tyrant, Murtherer of his subjects, and the like, you went on in a way of a story, these Citizens for a little Trading they will have Christ crucified, and the great *Barabbas* at *Windsor* released, and said you, the Clergy, the Assembly, they are all for crucifying Christ and releasing *Barabbas*; you made that expression, *O Jesus, what shall we do?* the King was a Prisoner then at *Windsor*, you made your application to the Parliament that was then present, you told them the people did expect Justice from them, you must not prefer the great Tyrant and Traytor, naming the King, to these poor hearts (the *Redcoates* standing by.)

Peters. *I must profess against most of that.*

Lord chief Baron. There is the same by others. It is further proved by the Order that you were appointed to preach.

Peters.

Peters. *I do not deny I preached, but not the ſe things.*

Lord chief Baron. The next thing is this, there was one Maſter *Chaſe*, this was during the tryall, he ſaith you preached at *Whitehall* upon this Text, the 149. *Pſalme* *to bind their Kings in chains, and their Nobles in fetters of iron*: you had two or three other verſes more; then you made a diſcourſe of a Major and a Biſhops man, the Biſhops man being drunk, the Major committed him to priſon, the Biſhop being angry, asked by what authority, the Major ſaid, there was an Act of Parliament for it, he did not finde that either the Biſhop or his man was excepted, you applyed that to the King, ſaid you, I will ſhew you an act of the Bible, *Whoſoever ſheds mans blood, by man ſhall his blood be ſhed*, this doth not except the King, Prince, Prince *Rupert*, Prince *Maurice*, or any of that rabble.

Peters. *It is falſe.*

Lord chief Baron. You ſaid further, This is the day that I and many other ſaints of God have prayed for theſe many years, and *Oliver Cromwell* laughed at that time. The next witneſs was *Tongue*, he heard you preach, and he ſwears the ſame with the former; that you applauded the ſouldiers, and that you hoped to ſee ſuch another day following, as the day before, and that bleſſed be God the houſe is purged, and the Lords will be ſhortly pull'd out, and the twenty eighth day of *January*, which was the day after the King was ſentenced, at Saint *James's* Chappel, you took for your Text the 149. *Pſalme*, the 6, 7, 8 and 9 verſes, whereof theſe words were part, *To bind their Kings in chains, and their Nobles with fetters of iron*, there in the middle of that Sermon having ſpoken before of the King, you ſaid that you did intend to preach before the *poor wretch*, upon the 14 of *Iſaiah* the 18, 19 and 20 verſes, ſpeaking of all the Kings of the nations, *Thou art caſt out of thy grave like an abominable branch, &c.* he ſaith further, you ſaid look upon your leſſer Bibles, and you will find the title is, *The Tyrants fall*. There is another witneſs, that is one *Bowdler*, a few dayes before the Kings death at *S. Sepulchres*, there you fell upon the old compariſon, all along you compared the King to *Barabbas*, and that a great many would have Chriſt Crucified, and *Barabbas* releaſed, all along comparing the King to *Barabbas*. One more, and that was *Ryder*, he heard this text, *He ſhall call his name Emanuel*, you fell

to speak of newes, what shall become of the King? and you told the King was *Barabbas*; and a great many would rather have Christ crucified then *Barabbas*. And then Mr. *Walker* he saith, that after the King was first brought to his tryal, he heard you say this, I have prayed and preached this twenty years, and now may I say with old *Simeon*, *Lord now let'st thou thy servant depart in peace, for mine eyes have seen thy salvation*: he mentions that you made use of the other comparison of the Major and the Bishops man, and inferred from thence, that the King and Prince &c. were not excepted out of the Scripture, where it is said, *Whosoever sheds mans blood &c.* you have heard all this witnessed against you, what have you to say for your self?

Peters, *These are but single witnesses.*

Lord chief Baron. The statute is two witnesses for Treason, but not two to one individual thing, though there are several witnesses have proved the same thing about *Barabbas* and our Saviour. Binde their Kings with chaines, &c. and of your other actions there is a whole Jury of witnesses, two witnesses expressly, we agreed upon the Kings death, and we resolved to set the King aside.

Pet, *I do not know the witnesses,*

Lord chief Baron. One is Sir *Jeremy Witchcot*, the other is Doctor *Young*, you shall do well if you have any thing to say to invalid these witnesses to speak it, else the Jury will be sent together to deliver up their verdict.

Peters. *My Lord if I had time and opportunity, I could take off many of the witnesses, but because their testimony is without control, I cannot satisfie my self, I have no skill in the Law, else I might have spoke for my self; I do not know what to say more, unlesse I had more time and counsel.*

Mr. Sol. General. If the prisoner can say no more, here is this in it, here are five places where he did consult about the *Kings* death, at *Windsor*, at *Ware*, in *Colemanstreet*, in the *Painted chamber*, and in *Bradshaws* house; and four witnesses to prove this, there are two witnesses to his comparison of the King and *Barabbas*, and two witnesses to his text of binding their Kings in chaines, &c. proof that he hath been in action in *New-England*, that he came from it with that intent, and then went to *Holland*, that he had been in arms, that he called the day of his Majesties tryal a glorious day, resembling

sembling the judging of the world by Saints, he prayes for this in the painted Chamber, preaches for it at *Whitehall*, *S. James's* Chappel, *Lambeth*; what man could more contrive the death of the King, then this miserable Priest hath done? the honour of the pulpit is to be maintained, and the death of this man will preach better then his life did, it may be a means to convert many a miserable person whom the preaching of this person hath seduced, for many come here, and say they did *it in the fear of the Lord*, and now you see who taught them, and I hope you will make an example of this carnall prophet. I have

The Jury went together and after a little consultation settled in their places.

Cl. Are you agreed of your Verdict?

Jury. Yes.

Cl. Who shall say for you?

Jury. Our Foreman.

Cl. How say you, is the prisoner at the Bar guilty of the Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. And so you say all?

Jury. Yes.

Cl. Look to him Keeper.

Counsel. We desire Mr. *Cooke* may be brought to the Barr, and that they may both have their judgement pronounced.

Cl. *John Cooke* hold up thy hand, what hast thou to say why the Court should not pronounce judgement for thee to dye, according to Law?

Cooke. I have a few words matter of Law: First, there is no averment in the Indictment that *I Cooke* mentioned in the Act of Indemnity, is the same with the *John Cooke* mentioned in the Indictment, and that I am the *John Cooke* mentioned in both.

Lord chief Baron. This will not help you in this case, you have owned and have pleaded by the name of *John Cooke*.

Cooke. The second is this, that the overtacts should be particularly expressed in the Indictment.

Lord chief Baron. This cannot be alledged in arrest of judgement; the Jury have found you guilty of compassing and imagining the death of the King, by the statute of 25. *Edw.* 3. and this cannot help you.

Cooke.

Co. I *say it was professionately.*

L. ch. B. That hath been overruled already, we have delivered our opinions; the profession of a Lawyer will not excuse them, or any of them from Treason, and this hath been overruled and is overruled again.

Co. I *humbly conceive that the remaining part of the H. of Commons were to be Judges whether there was a force or not.*

L. ch. B. This is all past and overruled.

Co. *Then I have no more.*

Cl. Hugh Peters, Hold up thy hand, what hast thou to say for thy self why Judgement should not pass against thee to die according to law?

Peters. I *will submit my self to God, and if I have spoken any thing against the Gospel of Christ,* I *am heartily sorry.*

Silence Commanded.

L. chief Baron You are both persons of that ingenuous and liberall education as I hope I shall not need to tell you what it is to die, you have had time, a great deal of time to think of it, you could not but think of this issue of your doings long ago, and therefore I shall spare my labour of telling you what it is to die, and of that eternity that you are to enter into, onely give me leave in a few words in relation to both of your professions to say something, to shew the nature and hainousness of this offence, the murther of the King, if you were not actually guilty of putting the King to death, nay, admitting (in charity) you had no intent to go so far as you did, you are by the laws of Christ, and this Nation, guilty of high Treason, in that, you that are a Lawyer know very well (and I speak it that you may lay it to your heart in the convictions of your conscience. I must say to you as *Joshua* said to *Achan, my son give glory to God and confess,* and it would become you so to do,) you know very well it is the law of this Nation, that no one house nor both houses of Parliament have any coercive power over the King, much less to put him to death; you know (as you cited very well) that the imprisoning of the King is Treason. You know both of you, this is an undoubted truth, the rule of Law is, that the King can do no wrong, that is, the King can do no wrong in the estimation of Law, he may do some [illegible] acts as a private person, but he can do little prejudice in his own person; if he should hurt any, it must be by Ministers, in that case the Law provides a remedy, if he doth it by Ministers, they must answer for it. The King of *England* is one of those Princes who hath

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an Imperial Crown, what is that? It is not to do what he will, no, but it is, that he shall not be punished in his own person if he doth that which in it self is unlawful. Now remember this when you took the oaths of Allegiance and Supremacy (I presume you both did so) what was your oath of Supremacy? It was this, that the King was the onely Supream Governour of these Realms, it goes farther, as he was Supream Governour, so he was the only Supream Governour, that excludes Coordination, you swear farther, that you will to the uttermost of your power defend the King against all conspiracies and attempts whatsoever, truely you that were a Lawyer when you had thus sworn, your fee could be no excuse against what you had sworn to. We know that the King in his politick or natural capacity, is not onely *salus populi* but *salus Reipublica*. The Law hath taken care that the people shall have justice and right, the Kings person ought not to be touched, the King himself is pleased to judge by the Law, you see he doth by law question the death of his Father, he doth not judge it himself, but the Law judges it. Mr. *Peters* knows very well he subscribed the 39. Articles of Religion, look upon them that were made in 1552. and upon those Articles that were confirmed in 13. *Elizabeth* the King is there acknowledged to have the chief power in these Nations, the medling with the King was a Jesuitical doctrine; This I speak not that the King should or ought to govern but by the Fundamental laws of the land, they that keep within the bounds of the law are happy, you that are a Lawyer, know this in point of law, and you that are a Divine, know this in point of Divinity. You both know the truth of it, and when you have thought upon it, I hope you will reflect upon that horrid crime, the shedding of Royal Blood. You see he had granted all those grievances of the people, taken them away, secured them for the future, and at this very time, when this horrid act was done, you see he had granted all at the desire of the people, he had made those concessions such, as (were it not in respect of others more then those that treated themselves) they thought was more then could be expected by the Nation. You that had a hand in the Kings death shall fall upon you, the guilt of it, because you were some of those that assisted those persons that broke the Treaty, prepared themselves for that death which you are to die, it is a debt which we all owe to nature, if in this case there is something of shame comes to you, it is that you must take as part of the reward of

your

your sin. The onely work I have now to do, is to pronounce the Judgment, and this is the judgement of the Court, and the Court doth award. That both of you be led back to the place from whence you came, and from thence shall be drawn upon a hurdle, &c. and the Lord have mercy upon your souls.

Cl. Cryer make proclamation.

Cryer, O yes, &c. All manner of persons, &c. and all Jurors and witnesses, are to appear at this place to morrow morning at 7. of the Clock in the morning upon pain of 100. *l.* a piece. So God bless King *Charles*, &c.

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15. *October* 1660. at the Sessions House in the Old *Bailey*.

The Tryal of *William Hewlet*.

Memorandum, that the Bill of Indictment against *William Hewlet* alias *Howlet* was found at *Hickes-hall* 12. *Octob.* instant.

Proclamation of the Court being made.

Clerk of the Crown. SEt *William Hewlet* alias *Howlet* to the Barre which was done accordingly.

Cl. William Hewlet alias *Howlet* hold up thy hand, Thou standest Indicted of High Treason in the County of *Middlesex*, by the name of *William Hewlet* alias *Howlet*, for that thou, &c. How sayest thou, art thou guilty of the High Treason whereof thou hast been Indicted and art now arraigned, or not guilty?

Hewlet. *I am not guilty my Lord.*

Clerk. How wilt thou be tryed?

Hewlet. *By God and the Countrey.*

Cl. God send thee a good delivery.

Set him aside.

Octob. 15. 1660.

Clerk of the Crown. Set *Axtell* to the Bar; which was done accordingly.

Clerk. *Daniell Axtell* hold up thy Hand.

Axtell. Pray my Lord, let me have Pen and Ink.

L. ch. Bar. Give Mr. *Axtell* Pen and Inke.

Clerk. *Daniell Axtell*, theſe men that were laſt called of the Jury are to paſs, *&c.* if you will challenge them or any of them, you muſt challenge them when they come to the Book before they are ſworn.

L. ch. Bar. Do you know how many you have liberty to challenge? becauſe I would not have you miſinformed, 35 you may challenge peremptorily, and no more.

Axtell. I thank your Lordſhip.

L. ch. Bar. Unleſſe you have any particular cauſe; if ſo, you may challenge more.

Axtell. I confeſſe I am wholly ignorant of the law.

John Kirke, John [illegible]th, Thomas Morris, Ralph Halſell, John Sherecroft, Francis Beale, Robert Cromwell, John Gallyard, John Shellury, George Rithe, were called, and by the Priſoner challenged.

Thomas Bide, Charles Pitfield, Robert Sheppard, William Dod, Thomas Uſman, William Maynard, George Pluckuet, Samuel Harris, John Nicoll of *Hendon, Henry Marſh, Thomas Biſhop, Thomas Snow,* in all 12 were admitted, and ſworn of the Jury.

Cler. of the Crown. If any man can inform my Lords the Kings Juſtices? *&c.*

Cl. *Daniel Axtell* hold up thy Hand. Look upon the Priſoner you that are ſworn, and hearken to your charge; you ſhall underſtand that the priſoner ſtands Indicted, *&c.*

K. Councell. May it pleaſe your Lordſhips, and you Gentlemen that are Sworn of this Jury, The High Court of *Injuſtice* that was Erected for Tryall of the late King, it had all the formalities of a Court to put in Execution that bloudy Act; they had their *Preſident*, their Counſel, their Chaplain, and their Guards; ſome of their Judges have been already Tryed, one of their Council, and their Chaplain. Now my Lord, we come to the Guards, and this Gentleman at the Bar [illegible] is now the priſoner, He was Commander of that Black Guard, that cruell and bloudy Guard: The Indictment is, *That he did Imagine and compaſſe the Death*

of the King; there be several overt acts that are mentioned in the Indictment as Evidences of that Imagination, as the consultations to bring him to Tryal, the Actual bringing him to Tryal, and the Bloudy Execution upon the Scaffold; Our Evidence shall be this, That during the time of the Tryal, the Prisoner at the Bar did Command the Souldiers in *Westminster-Hall*, himself did keep the Entrance into the Court, and when *Bradshaw* did speak to the King and told Him he trifled away time, and required his answer to the charge Exhibited in the Name of the Commons of *England* Assembled in Parliament, and the good People of *England*; that a Noble person in the Gallery there cryed out, it was a *Lye*, saying, that above half the Commons disowned it, saying, where are these good people? *it is a lye*, Oliver Cromwell *is a Traytor*, this bloudy Fellow commanded the Souldiers to shoot him: he did several times command and encourage the Souldiers to cry out *Justice, Justice*; and the last day of that horrid Tryal, called by them, *the day of Judgement*; he likewise commanded them to cry out *Execution, Execution*, and when some of them would not doe it, he had the Valour to *Beat* them. My Lords and Gentlemen of the Jury, if we prove any of these particulars to demonstrate unto you that he was Guilty of compassing and imagining the King's Death, it is equal as if we had proved he did Actually cut off the King's head.

Mr. *Bodurdoe*, Mr. *Nutley*, Mr. *Harrington*,
Sir *Purback Temple*, Mr. *Sympson*, Mr. *Baker*,
Mr. *Huncks* and Mr. *Jeonar* Sworn.

Councel. Mr. *Sympson*, tell my Lords and the Jury, who had the command of the Souldiers during the Tryal of the King in *Westminster-Hall*.

Sir, My Lords (as I said before in the case of Mr. *Peters*,) Colonel *Stubbers* and Col. *Axtell* had the command of the Souldiers below Stairs, near that which was called the *High Court of Justice*.

Axtell. I desire to know his Name my Lord?

Sir, my Name is *Holland Sympson*.

Councell. Did you see him there commanding the Souldiers?

Sir, There was a kind of a Hubbub in the Court, there was a Lady (they said it was the Lady *Fairfax*) present at the Exhibiting of the *charge* against the King, said to be in the Name of the *Commons and People of England*; She spoke out aloud, and said, *it was a lye*

Cast

dust not half, not a quarter of the people. *Oliver Cromwell* is a Rouge and a *Traytor*, they called for a Guard, this Gentleman he was called, and brought up some Musqueteers and commanded his Souldiers to Present and give Fire against the Lady, and commanded her to Unmask.

Axtell. What Lady was it I desire to know?

Sir. She went by the Name of the Lady *Fairfax*, I know not whether it was so or no, it was the common report it was she.

Councel. Mr. *Huncks* pray tell my Lord what you know of the Prisoner at the Bar.

Huncks. *My Lord* to say positively any thing of the man touch-his command I cannot, but onely that morning the King Dyed he came into the Door of the Room where Colonel *Phayre*, Col. *Hacker*, *Cromwell* and my selfe were (*Ireton* and *Harrison* lying in bed together in the same Room) and then he stood at the Door half in and half out; I refusing to Sign an Order for Executing the King as *Cromwell* ordered me, and some little crosse Language having passed, saith the Prisoner at the Bar, Col. *Huncks I am ashamed of you, the Ship is now coming into the Harbour and will you strike Sayle before we come to Anchor.* This I appeal to your self, but for crying out Knock them down, Shoot them I know not who it was, the Officers cryed Justice, and some of the Souldiers, but I professe I know not who it was particularly, but they cryed Justice, and then I fell a trembling, for I was affraid of the King; but these were the words he used to me, *will you strike sayle*, &c.

Axtell. My Lord, I desire to ask him a question.

L. ch. Bar. Ask him what you will.

Axtell. If I am not in the right I hope your Lordships will direct me.

L. ch: Bar. Go on.

Axtell. Col. *Huncks*, where was it?

Huncks. In a little Room in *Whitehall*, where *Ireton* and *Harison* lay in bed together.

Axtell. Do you know whereabouts?

Huncks. I [illegible] to the Room; I appeal to your own conscience before all this people.

Axtell. By your favour Sir the room I pereeive you know not, and truly Sir, *My Lord*, if you please to give me leave, because he

appeals to my conſcience, I doe appeal to the Great God before whom it may be, I may be Arraigned to give an account of all my Words, Thoughts and Actions; I do not remember that ever I had any converſe with this man there, or met him there, or any of that company there that day, he was a ſtranger to me, but I wiſh that you (to ſave your ſelfe being in the Warrant for Execution) doe not make others a Peace-Offering to ſave your ſelf, the Lord that knows my heart, I appeal to him, I appeal to your own conſcience because you appeal to my conſcience, I never met you nor ſaw you there.

Huncks. Have you done? then give me leave, you ſay you doe not know me, I appeal to the ſame God, when *Cromwell* took upon him to have the Crown, have not I ſaid what have you got by being *Jehu*-like? *Lord ſtrike me dead here if it be not true.*

Axtell. I will not reflect upon him, but becauſe he hath appealed to my conſcience, therefore I ſpeak it, it is known Notoriouſly how *Jehu*-like you was, when you was one of the chief Guards of his Majeſty, one of the Fourty Halberteers that did oppoſe every perſon then for the King; had I had time and had not been a cloſe Priſoner as I was, there was Witneſſes enough.

Councel. This after our Evidence is more proper.

Huncks. Spare me not Col. *Axtell.*

L. ch. Bar. Take the Old and Antient courſe, let the Witneſſes that are produced for the King be all heard, then give your anſwer to all of them together.

Axtell. My Memory is not very good.

L. ch. Bar. You have Pen, Ink and Paper.

L. ch. Bar. Mr. *Axtell*, is this all that you deſire to ſpeak to Col. *Huncks*?

Axtell. Yes my Lord.

L. ch. Bar. Have you any other Queſtions?

Councel. My Lord, we have a few words, he Objects as if Col. *Huncks* were under a danger, he is pardoned.

Axtell. I deſire to ask him upon what account theſe words were ſpoke?

Huncks. My Lord it was this; *Cromwell* having a Commiſſion (which I think I heard read here) Colonel *Hacker* was reading of it, My Lord, *Cromwell* he comes to me and by Vertue of that Com-

Commiſſion, he would have me to write Warrant for Executing the King. I refuſing to write that Warrant (upon this which he ſpeaks of that ſtanding at the Dore, if God bleſſe me *I* will ſearch all the Dores at *Whitehall* but I will find it out) I not doing it, I ſaid why ſhould it be offered to me, ſayes *Cromwell* thou art a peeviſh Fellow, *Cromwell* fell a writing, aſſoon as ever he had done that writing, he give *Hacker* the pen, what *Hacker* writes I know not, and upon my refuſing, this priſoner at the Bar ſaid, *Col. Huncks* I am now aſhamed of you *The Ship is now coming into the Harbour, and will you now ſtrike Saile before you caſt Anchor.*

Councel. You obſerve the courſe of this Evidence, there was a Warrant or Commiſſion directed to three persons; *Hacker, Huncks,* and *Phaire* for Execution of the King; *Cromwell* demanded of this Gentleman (*Col. Huncks*) that he ſhould ſign a Warrant by Vertue of that other Warrant, and this Gentleman refuſing it, the Priſoner objects this, that he to ſave himſelf doth witneſſe this againſt the Priſoner. Gentlemen he did refuſe the thing, have you any thing to ask *Col. Huncks.*

Axtell. He ſayes *Col. Phaire* and *Hacker* was there; I doe not doubt but they will be ſo conſcientious to vindicate me from all this charge.

L. ch. Bar. If it be any thing that tends to your defence that you will be heard afterwards; but have you any Queſtions to ask *Col. Hunks?*

Axtell. No more, I know nothing of it, if I were to dye at this Bar preſently.

Councel. Sir *Purback Temple* pray tell my Lords and the Jury your knowledge of the carriage of this Gentleman touching the Tryal of his Late Majeſty.

Sir P. Tem. My Lord being preſent and engaged by ſome perſons of Honour, Servants of his late Majeſty to be preſent when that Horrid Murther was acting before this Court of Juſtice (as they called it) I was preſent at all the Tryals of the King, & very neer him I heard the King demand from *Bradſhaw* by what Authority and *Commiſſion* they proceeded thus ſtrangely to Try him. Then I heard the Lady *Fairfax* and one Mrs. *Nelſon* (my ſiſter) after the exhibiting of the charge in the Name of the Commons Aſſembled in Parliament, and the good people of this Kingdom againſt *Charles Stuart* King

of

of *England*, I say I heard the said Lady cry out from a Gallery over the Court, *Not half the people; it is false! where are they or their Consents? Oliver Cromwell is a Traytor!* Upon which I heard the Prisoner at the Bar, cry out, Down with the Whores, shoot them, which made me take the further notice of them, seeing him in *Westminster-Hall* commanding the Souldiers there, I saw him the most Active person there; and during the time that the King was Urging to be heard, he was then laughing, entertaining his Souldiers, scoffing aloud, whilest some of the Souldiers by his suffering, and (I believe) procurement, did Fire powder in the palmes of their hands, that they did not onely offend his Majesties smell, but enforced him to rise up out of his Chair, and with his hand to turn away the smoke; and after this, he turned about to the people and smiled upon them, and those Souldiers that so rudely treated him: Then turning himself to *Bradshaw*, said to him and the Court, There are some sitting here (fixing his Eyes upon some persons neer *Bradshaw*) that well knew that if I would have Forfeited or Betrayed the Liberties and Rights of the people, I need not have come hither, (or words to this Effect:) But their Liberties and Rights are dearer and nearer to me then my three Kingdomes; nay then my life it self. Therefore I desire you to here me and remember, that I am your lawful King that have done you many Acts of Grace and Favour.

After which, this person Mr. *Axtell*, prisoner at the Bar, commanded his Souldiers to cry out, *Justice*, which the Souldiers not readily obeying of him, I saw him beat Four or Five of them with his Cane, untill they cryed out, (with himself) *Justice, Justice, Execution, Execution*, which made me turn to a Noble Lord, by whom I then stood, and said, Pray my Lord take notice, there is not above 4 or 5 that cry out *Justice, Justice:* I heard also of their spitting in the King's Face; and I think no bodies sufferings have been so like those of our Saviour Christ Jesus as his Majesties were: After this, this persons crying *Justice, Justice Execution, Execution*, a second time, the Court proceeded to pass Sentence; the which his Majesty pressed hard against, and to [illegible] him, Sir, before you passe that ugly Sentence (which *I* very well understand you are intended to doe,) I desire you to hear me, hear me, hear me, passionately and not affectionately expressing it, which they denying the King, and the noise of *Justice, Justice, Execution, Execution*, being repeated,

peated, they proceeded, and read that ugly Sentence of Death: after which, his Majesty was immediately hurried away from the Bar into a common *Cedan*, where he was carried by two common-Porters; which *Cedan* I followed to the middle of King's street, where I saw the two Porters, in reverence, go bare, till the Souldiers (under the command of the Prisoner at the Bar) beat them, and would not suffer them to go bare when they carried him. After this, the people cryed out, What do you carry the King in a common *Cedan* as they carry such as have the Plague? God deliver your Majesty out of such Enemies hands. In which Street I was forced to leave the sight of his Majesty, occasioned by the injuries and hurts I received in my person from the Souldiers under *Axtell*'s command; they carrying him through the Streets shouting in triumph. A short time after, I received an importunate command from a Lady of great Honour (a servant of his Majesties) that I would endeavour to find out where the Body of the *Martyr'd King* was, and to give her an account where then it was; Applying my self to *Whitehall*, after two or threescore Entreaties, I was denyed; but understanding that money would doe it, I gave the persons then under the command of Mr. *Axtell* that then kept it, to shew it me, half a piece; who in scoffing manner took me by the hand, said, *If thou thinkest there is any sanctity or holinesse in it, look here*; where I saw the Head of that Blessed Martyr'd King lie in a Coffin with his Body, which smiled as perfectly as if it had been alive: this is the sad account of the martyr'd King, and this sad horrid Prisoner Mr. *Axtell*.

Axtell. My Lord, may I ask that Gentleman some Questions?

L. ch. Bar. Yes, yes.

Axtell. My Lord, He seems to say, that I bid the Souldiers cry out for Justice, he doth not at all say I was there in command; but he saith a Lady, by report the Lady *Fairfax*, spake some words, and that I should bid the Souldiers silence her; truly I desire to know the certainty of the place where I stood.

Sir P. T. My Lords and Gentlemen of the Jury, I saw this person standing within a Pike or two length as I can guesse it, (I remember the place within a yard of the ground in *Westminster-hall*,) I do not say this person sate in the Court as a principal Officer that did then hold his Majesty prisoner at the Bar, I did not say, it was

a Lady

a Lady unknown, or reported to be ſuch a one; but I ſaid it was the Lady *Fairfax*, and my own Siſter Mrs. *Nelſon*, and he cryed ſhoot the Whores.

Axtell. He ſeems now to ſay I commanded the Guards; I never was a Guard to his Majeſty or had thing to doe in that buſineſſe, but it was wholly committed to a company of men I know not of. That Gentleman that ſpoke I have no acquaintance with him; I think he did not know me at that time.

L. ch. Bar. Have you any thing to ask him?

Sir P. T. My Lord, another paſſage he puts into my memory when I did obſerve a thouſand of ſad faces; I ſaw none laughing but your ſelf, as if you had been carouſing and entertaining the Souldiers. I do not charge you that you commanded thoſe Halbertiers, but thoſe *Red-coats*; you were all in *Red*: I ſaw you *cane* thoſe 4 or 5 ſouldiers I mentioned, till they cryed *juſtice, juſtice* with you, and that with the powder in the palms of their hands, they forced the King to riſe out of his *chair*, which you were much pleaſed with and laughed at.

Axtell. I ſay before the Lord, before whom I muſt be judged again for this, I do deny this whole Evidence.

Griffith Bodurdoe, Eſq. ſworn.

Gr. Bod. My Lords and you Gentlemen of the Jury, I was at the time of this ſad Tryall in *Weſtminſter-hall.*

Axtell. Your Name Sir, I beſeech you?

Councell. His Name is Mr. *Bodurdoe.*

G. B. I ſay I was all the time of the King's Tryal in *Weſtminſter-Hall*; I was in a Gallery that I had out of my houſe where I then lived, juſt under and beſides the Houſe of Commons; and I do remember I ſaw this Gentleman there; I do think he was then called Lt. col. *Axtell* ſo far as I remember; truly, I have not ſeen him ſince before this day, nor have had any occaſion to have known him, but that I ſaw him very active in giving commands to the Souldiers there: this Gentleman was keeping the [illegible] letting ſome in, and putting others out: he ſeemed to have command of it; One day (whether it was about ſome paſſage or their Preſidents Speech I know not,) there was a Lady in the ſame Gallery where I ſtood, and ſome muttering, *It is a lie, not half the people*, or words to this effect. He the now Priſoner at the Bar ſtanding below in the court within

within the Bar not far from *Dendy* with some Five or Six Souldiers; upon this muttering and disturbance (as he apprehended) to the Court, he called to the Souldiers, saying, Shoot them if they speak one word more; they did also present the Muzles of their Musquets up to the Gallery: My Lord, by this we were very Hush; after that immediately within half a quarter of an hour, *Dendy* came to the Gallery from the Court to know who it was that made that disturbance. But the Lady was withdrawn into my chamber, and did not come out afterwards.

Ax. Where was this Sir? *L. ch. Bar.* What is it you desire?

Ax. My Lord, where he saw me then?

L. ch. Bar. Mr. *Bodurdoe*, you here the question.

Mr. *Bod.* There was a Gallery which I do believe is yet standing, and the Court was just underneath the Gallery, and you were just underneath the Gallery and five or six Souldiers with you.

Richard Young, sworn.

Councel. What do you know of the carriage of the prisoner at the time of the Tryal.

Young. I was upon a Scaffold whereby I did see what was done in the Hall; I saw that Lieut. Col. *Axtell* was busie and very active in encouraging the Souldiers to say, let us have Justice against the King.

Axt. I desire to ask Mr. *Young* one question? others say that the word was cry for Justice, this Gentleman is pleased to make some Addition, Let us have *justice against the King!*

Young. No not against the King, but I conceived you meant against the King.

Axt. I cry you mercy, you do but conceive so.

Young. You were upon the right hand of the Hall almost at the corner near the pavement, it could not be otherwise applyed.

John Leoner, sworn.

Councel. Speak your knowledge of Col. *Axtell*'s carriage at the High Court of Justice.

Leoner. I had the Honour to wait upon the King as a domestique Servant to the time of his Death; that day which was the first day the King was brought to his Tryal, I did wait upon Him among other servants, we stood close to the Bar where the King was, some three or four of us, Col. *Axtel* was upon the right hand of us commanding the Guard to keep things in order when the Court was to be withdrawn, (the many circumstances about the Lady *Fairfax*

shall be omitted) the *President* command the prisoner to be withdrawn, with that Col. *Axtell* steps down before me to draw out his Guard, this I heard him say, Souldiers cry for *Justice, Justice*, I was the next man to him; and upon the last day of the Tryal, he did come down in the same manner, and bid the Souldiers cry out for *Execution, Execution*.

Axtell. I do desire a question may be asked of that Gentleman? I must confesse I did not know the Gentleman, at that time, though he saith he knew me. He seems to say, that at the first day I encouraged the Souldiers to cry, *Justice, Justice*, and the last day, *Execution, Execution*; What place was this in Sir?

Jeon. I tell you, the King was brought from *Cotton* House through a Guard that you managed of Musquetiers and with a guard of Partisans; besides, there was my self and others there: when we came up, we got as close to the Bar as we could; you were passing up and down from above and below: when the Court was dissolved, you stept down just before to draw your Guard to make ready, & to cry, *Justice, justice*, and the second time, *Execution, execution*, you were very near me, and then you cryed, *Justice, justice, Execution, execution*.

Axtell. Are you certain; I have heard other men, I confess, accused for this, Some other Officers.

Jeonar. I did hear you, I do know you by sight.

Councel. You know him now to be the same person?

Jeonar. Yes.

Samuell Burden, sworn.

Coun. Tell my Lord and the Jury what you know of the carriage of the Prisoner.

Burden. My Lords and Gentlemen, I do believe Col. *Axtell* knows me well enough, I was then under his own command at *Whitehall* there were some Cavaliers then in the Regiment: it was my fortune I came into your Company, I wish I never had: you commanded more besides my self to be a Witnesse against the King, and Judge *Cooke* took my Examination: you brought me in, you commanded the Guards that time at *Whitehall* when the King was upon his tryal.

Axt. What more?

Bur. And you commanded *Elisha Axtell* with a file of Souldiers, to take a Boat & go down to the common *Hangman* that liv'd beyond the *Tower* to execute the King; he is now *Shepard's* Serjeant in *Ireland*.

Axtell. My Lord, I desire to ask him a question; he was pleased to say, I desired him to be a Witnesse.

&c.

Bur. Yes.

Axtell. Where was it?

Bur. In the Court at *Whitehall.*

Axt. My Lord, I have seen the printed List of VVitnesses against the King, and in that list you shall find no such Name.

Bur. I have been a Prisoner in *Dublin* by your means.

Axt. My Lord, I hope you will take notice of that.

Coun. *Burden* do you remember any of his commands to *Web*, to draw up in the Banqueting-house?

B. He commanded *Web* to draw up in the Banqueting-house, during the time of Execution, his own company. I was one of his own company then.

Coun. In order to what?

Bur. For Execution.

Axt. My Lord, is *Webb* here?

Bur. He is in *Dublin.*

Axt. I wish he were here.

Edward Cooke, Sworn.

Cook. And it please your Honour my Lord, the last day of the Tryal of his Majesty, I came into *Westminster-hall*, coming where the Court was, I did see Col. *Axtell* the Prisoner at the Bar there with some Musquetiers.

Coun. VVhat day was this?

Cook. The last day of his Majesties Tryal.

L. ch. Bar., Go on Sir.

Cook. Standing there a little while, his Majesty came guarded with some Halberteers, when he came by the Souldiers that stood with Col. *Axtell*, his Majesty bowed, and afterwards put off his Hat, and went up to the Court; I could not know what *Bradshaw* said to him, I stood below, I heard him say, he was brought by the *consent of the commons and people of England*: there stood a Lady above in a Gallery crying out, *it is a lye, where are the people, or their consents? Cromwell is a Traytor:* whereupon Col. *Axtell*, standing by saith he, what Drab is that that disturbes the court; come down or I will fetch you down.

Mr. *Nelson*, Sworn.

Coun. Tell my Lords and Gentlemen of the Jury, touching the Discourse between you and the Prisoner at the Bar in *Dublin.*

Nelson. My Lords and Gentlemen of the Jury, upon a Discourse

with the prisoner at the Bar in *Dublin* 5 or 6 yeers since, upon the platform in that castle we discourſed of the late Kings, having had ſeveral reports, I deſired to know of him who it was that Executed the King, thinking he might inform me, he was pleaſed to tell me this, ſaith he, the perſons that were imployed in that ſervice, you know them as well as I do, truly Sir not I, ſaid I, I ſaw them in Vizards but not their Viſage as I know of, yes faith he you doe know them, it is true faith he, my ſelf and others were imployed in that affair in order to the Execution; but there were ſeveral perſons came and offered themſelves out of a kind of Zeal to doe the thing, but we did not think it proper to imploy perſons whom we did not know, but we made choice of a couple of Stout perſons, pray let me hear their Names ſaid I, ſaith he it was *Heulet* and *Walker*, I deſired to know their reward, Truely ſaith he I do not know whether 30*l.* a piece, or between them; I ſaid it was a ſmall reward for a work of that Nature, truly ſaith he that was all.

Axt. You named one man, I did not heare the other named.

Nelſon. I named *Hewlet* and *Walker*, he was one that managed the Execution, he told me ſo, and it pleaſe you Sir.

Axtell. He is pleaſed to ſay that in *Ireland* there was ſuch conference, was any body by?

Nelſon. No Sir.

Axt. Did I name any body to you?

Nel. You named thoſe two perſons.

Axt. Certainly I muſt invent them then, for I had no more knowledge of them then any one here

Nel. You told me you were one of them that had the managing of that Affair.

Counſel. My Lord, we have done with our Evidence, thoſe particulars that were firſt opened to you have rendred the priſoner much a blacker perſon then we thought we leave him to his defence.

Axt. May it pleaſe your Lordſhips, in the Firſt place becauſe I am ignorant in the laws, I deſire to know upon what ſtatute this indictment is grounded.

Roth. B. It is grounded upon the ſtatute of the 25*th.* of *Edw.* the Third.

Axt. My Lords, I muſt acknowledge my ignorance of the laws, being a thing I never ſtudied, nor have the knowledge of, but I have heard it is the duty of your Lordſhips and the Judges to be of Counſel for the priſoner in things wherein he is ignorant in matters of law,

law to make his just defence, and therefore my Lord the Indictment it self being matter of law, if your Lordships please not to Grant me Councel to speak to matters of law, I humbly pray that your Lordships will be pleased that for want of knowledge, formalities, punctilloes, and nicities of the law, I might not undoe my self; I have heard by a learned Judge, that though the Judge be of Counsel to the King, yet by his Oath he is also to be Counsellor to the prisoner, and stands as a Mediator between the King and prisoner, and therefore my Lord I shall beg that humble Favour, that wherein I shall fall short to make the best improvement of my plea in matter of law, that your Lordships will help me, and not take advantages against me, as to the nyceties, formalities and punctilloes of the law; and my Lord this is a resemblance of that Great day where Christ will be Judge, and will Judge the secrets of all hearts, and of all words, and of all persons, and by him all Actions are weighed, knows all our hearts whether there be malice, or how it stands in the frame of each heart before him in this place, and therefore I hope there will be nothing by prejudging, or any thing by precluding to be so black a person as it seemed to be said against me. *My Lords*, I must shorten the time and come to speak as to the Authority.

L. ch. Bar. As to what Sir?

Ast. I speak as to the Authority by which or under which I Acted, I humbly conceive my Lord under Favour, that I am not within the compasse of that statute of the 25*th.* of *Edward* the Third, for that questionless must intend privare persons, *councelling, Compassing or Imagining the death of the King*. But you know my Lords the War was first stated by the Lords and Commons the Parliament of *England*, and by Vertue of their Authority was Forced to be raised, and they pretended by law that the right of the *Militia* was in them, and your Lordships will remember in several Declarations and Acts that was mutually exchanged between his Majesty and parliament, and my Lord that was the Authority the Lords and Commons Assembled in parliament, raised a Force and made the Earl of *Essex* General, and after him the Earl of *Manchester*, of the Eastern Association, and after that Sir *Tho. Fairfax* Lord General of the Forces, by this Authority I Acted, and this Authority I humbly conceive to be legal, because this parliament was called by the Kings Writ, chosen by the people & passed a Bill they should not be dissolved without their own consents, that the parliament was in being when the Tryal was, and a question whether yet legally Dissolved.

In

In the Fourth place they were not only Owned and obeyed at home but abroad to be the chief Authority of the Nation, and also owned by Forreign States and Kingdomes, sent Ambassadors to that purpose, under them did all the Judges of the land Act, who ought to be the Eye of the land and the very light of the people, to Guide them in their right Actions, and I remember the Judges upon Trial (I have read it of High Treason) Judge *Thorpe*, *Nicholas* and *Fermin* have declared it publickly, that it was a lawful justifiable thing by the law of the land to obey the Parliament of *England*. *My Lord*, it further appears as to their Authority over the people of this Nation peetitioning to them as the supreme and lawful Authority: and *My Lords* as I have heard it hath been objected that the Houses of Lords and Commons could make no Act. Truly my Lord if you will not allow them to be Acts, though they intitle them so, call them so, and obeyed as so by the Judges, Ministers, and Officers of State, and by all other persons in the Nation, yet I hope they cannot be denyed to be Orders of Parliament; and were they no more but Orders, yet were they sufficient as I humbly conceive to bear out such as Acted thereby. And my Lord the Parliament thus constituted and having made their Generals, he by their Authority did constitute and appoint me to be an inferior Officer in the Army, serving them in the quarters of the Parliament, and under and within their power, and what I have done my Lord it hath been done only as a Souldier, deriving my power from the General, he had his power from the Fountain, to wit, the Lords and Commons, and my Lord this being done, as hath been said by several, that I was there and had command at *Westminster-hall*, Truly my Lord if the Parliament command the General, and the General the inferior Officers, I am bound by my Commission according to the Lawes and Customes of War to be where the Regiment is; I came not thither Voluntarily, but by command of the General, who had a Commission (as I said before) from the Parliament. I was no Counsellour, no Contriver, I was no Parliament man, none of the Judges, none that Sentenced, Signed, none that had any hand in the Execution, onely that which is charged is that I was an Officer in the Army, if that be so great a crime, I conceive I am no more Guilty then the Earle of *Essex*, *Fairfax*, or the Lord of *Manchester*.

Judge Mallet. You are not charged as you were an Officer of the Army.

Axtell.

Axtel. My Lords That is the main thing they do insist upon: my Lord, I am no more Guilty then his Excellency the Lord General *Monck*, who Acted by the same Authority, and all the people in the three Nations; and my Lord, I do humbly suppose, if the Authority had been onely an Authority in Fact and not Right, yet those that Acted under them, ought not to be questioned; but if the Authority commanded whatsoever offence they committed, especially that that guided me was no lesse then the declared Judgement of the Lords and Commons, sitting in Parliament; they declared that was their right as to the *Militia*, and having explained several statutes of *Henry* the 7*th*. wherein the King having enterchanged Declarations with the Parliament; the Parliament comes to make an Explanation upon that Statute; and my Lord, it is in *Folio* 280. wherein they do positively Expound it and Declare it as their allowed Judgement. To clear up all scruples to all that should take up Arms for them; saith the *Parliament* there as to the Statute of the 11. of *Henry* the 7. Chapter the first, which is printed at large, comes there to explain it in General, and comes here, *Folio* 281. and gives this Judgement; *It is not, say they, agreeable to Reason or Conscience that any ones duty should be known, if the Judgement of the High court of Parliament be not a Rule or Guide to them.* In the next place, this is the next Guidance, Rule, and Judgement of *Parliament*, upon the Exposition of this Statute, and as they have said in several places (was it not too much to take up your Lordships time) they are the proper *Judges and Expounders of the laws.* The High Court of *Parliament* have taken upon them to expound the law, and said, that we lawyers will give the meaning of the Text contrary to what they have expounded the meaning under their hands: in the same *Declaration* his Majesty is pleased to quit that Statute upon which I stand Indicted, the 25. of *Edw. the Third*, where they do my *Lord* expound that very Statute in the Declaration made in 1643. *Folio* 722. I come to the declared Judgement, wherein they did positively say, that the persons that do Act under their Authority, ought not to be questioned as persons Guilty *Folio* 727. that is the Exposition that the Lords and Commons Assembled in *Parliament* doth make upon the statute.

Councel. My *Lord* this is an Argumentation of Discourse in justificatirn of his proceedings, we desire to know what he will answer to the Plea.

Ax. My *Lords*, I have this further to say, that if a House of Commons Assembled in *Parliament* may be Guilty of Treason; (for the truth

truth is, if I Acted Treason that Acted under the Authority of the Lords and Commons in Parliament, and of the Commons in Parliament) then doubtlesse they must begin the Treason: if the House of Commons, who are the collective body and Representation of the Nation, all the people of *England*, who chose them, are guilty too; and then where will there be a Jury to try this? concerning the Commons alone, I have been over ruled.

L. ch. Bar. If you have anything to say to the Lords and Commons, answer to your charge; your charge is nothing of the Lords and Commons; but what you Acted when the house was broke and Forced.

Coun. You cannot but know that there is nothing charged against you, for which you can so much as pretend an Authority of the Lords and Commons, you know before you could doe this Horrid Murther, you were the persons that destroyed the Lords and Commons both; indeed you Ravel in a businesse, and to make people gaze upon you without any Ground.

Axt. I am upon my life, *I* hope you will hear me patiently.

L. ch. Bar. God forbid but we should.

Axt. I doe desire to assert my Authority; if any thing was done upon the House of Lords and Commons, I doe not come here to justifie their Actions, I was not concerned in it. My next Plea is this, that if a House of Commons can be charged Guilty of *High Treason* as a community, the distributive Body must needs be Guilty.

Court. If there should have been 20 or 40 men come out of the House of Commons, and should Murther a man, they must answer for that; it is not the community that can doe such an Act of Treason; these persons that you call a House of Commons, there was but 26 of them, and these must be the people; this is the state of the case: and when you have thrust out thrice the number of those remaining only those can serve your turn.

L. Annesly. Mr. *Axtell*, *I* am very sorry to see you in that place and it troubles me as much to hear you vent that for an Authority which you know your self was no authority; you would now for your defence for life (& it is reason you should make as full a *defence* for life as you can) you wold shelter your self under that Authority, which *I* am sorry *I* must say were one of the greatest Violators of. you cannot forget how near a close of this bloudy War by the mercy of God, this Nation was, when the Army interposed, whose Trade it was to live by War, when they had felt so much of the sweet of War, they would not suffer

ſuffer the people to enjoy peace, though the Lords & Repreſentatives in Parliament had agreed to it; A Treaty was begun, terms of peace propounded and agreed to, this you cannot forget, and will have no need of Notes or Books to help your Memory: when the people Groaned under the miſeries of War and thirſted after Peace, then come up the Army, who were ſervants to the Parliament till that time, taking upon them the Authority (you cannot forget that your ſelf was one of the number that came to offer accuſations againſt the majority of the Commons Houſe, calling them Rotten Members;) the Houſe of Lords was not then ſuffered to ſit, they would not joyn in that Ordinance that was preparing for the Tryal of the King; when the Lords had refuſed, they were no longer fit to be Lords neither; then comes in a new Authority which we never heard of before; a remnant of the Houſe of Commons joyning with the Army, that had driven away the greateſt part of the Houſe of Commons; (for in all Aſſemblies and Courts the major part muſt determine, or no determination) after this courſe was taken, then is an Act ſet on foot, they take upon them by Votes of their own to be the Parliament of *England*, that the ſupreme power of the Nation is in the Repreſentatives of the people; who were they? thoſe few only that remained, almoſt all the Cities, Counties and Burroughes of *England* had none left to repreſent them, they were driven away by Force, then was this Act of Parliament (ſuch an Act as was never heard of before) ſet on foot and paſſed as an Act by a few of the Houſe of Commons, if you can plead this for your defence, this is the act that you muſt ſhelter under. but you know the Lords and Commons had Unanimouſly reſolved for peace, and ſo agree with the King: if this Act will be any defence, you may plead it to the full; and this is all you have to ſay; therefore go upon no Forreign matter.

Axt. If it pleaſe your Lordſhip, that worthy Lord that ſpoke laſt is pleaſed to ſay, that I was one of the perſons that did accuſe ſome of thoſe Members of Parliament; truly my Lord, I never did come to the Commons Bar but once, preſenting a Petition; and for my hand either in charging any of the Members, or Secluding any of them, I never had any hand in that matter, this is all to that part. Next I Humbly conceive here I muſt ground my bottome, and if I periſh, I periſh by a Judgement in a Parliament; My Commiſſion that did Authorize me to obey my Generall, was given me when the Lords and Commons ſate in Parliament, I had no other Commiſſion then this: my Lord *Fairfax* cammanded the Army after

the Kings Death by the like Commiſſion, I did but my duty in going to my Regiment, the General ſaith, go to ſuch a place, ſtay there, if I refuſe, by the law of War I Dye, if I obey I am in danger likewiſe; I ſay my Commiſſion was given me by the Lords and Commons, and therefore I hope my Lord that what I have ſaid and offered in that particular, is not Truthleſſe but of Weight.

Court. The Effect of your Commiſſion is onely to make you an Officer.

Axtell. My Commiſſion bears date the 27*th*. of *March* 1648. Ten months before the Kings Death; we had no other commiſſions, therefore I humbly conceive the queſtion will be this in point of law, and I humbly deſire it may be Truly and Fairely ſtated by your Lordſhip and theſe Honourable Judges, that whether a man being guided by the Judgement of the Lords and Commons Aſſembled in Parliament, and having Declared their Judgements and Expoſition of that ſtatute of the 25*th*. of *Edward* the Third, and Acting onely by that Judgement of Parliament and under their Authority can be queſtioned for Treaſon. That my Lord is a queſtion that I do humbly think is a point in law, and that you will pleaſe fairly and truly to ſtate it, whether I am within the compaſſe of that ſtatute whereupon I am indicted.

Councel. My Lord, We do not charge him with any thing that he did Act under the colour of his Commiſſion, or with any thing he did before that, but that which we charge him with are the Acts that he did at the Tryal of the King, ſhew us your Commiſſion from the Lords and Commons Aſſembled in Parliament for Tryal and Execution of the King, you ſay ſomething; we doe not charge him for any thing done by Vertue of that Commiſſion, but with thoſe violent Acts that he did in encouraging the Souldiers to cry *Juſtice, Juſtice, Execution, Execution,* and all thoſe other Violent Actions of his own malitious heart againſt the King. We humbly beſeech you he may anſwer to that which is the charge againſt him, and that is the *Compaſſing and Imagining the Death of the late King,* and his declaring that by thoſe overt acts that we have proved. *My Lords,* we deſire that the Priſoner at the Bar may remember that he is not Indicted for levying War againſt the King, if ſo, then that Sir which you offer migh be given as a Plea, and we ſhould have ſpoken to it; but you are Indicted for *Compaſſing and Imagining the Death of the King;* and that which we have given in Evidence were the ſubſequent overt acts to prove the ſame.

Axtell

Axtell. I hope you will not think it much to give me some more freedom for my own defence for life; My Lord, I must needs say though there waa a force on the Parliament, I am not to justifie it; I was no Lawyer, no Statesman, no Counsellor, but a Souldier; & if the General who had a Commission from the Lords and Commons and that some years before and after the King's Death, be not Guilty of Treason, what I did was by command from my General; and though I am charged with being in Arms in *Westminster-hall*, and at such and such a place, yet it was not a Voluntary act; for I was bound to obey my General; I do humbly pray that I may have your Lordships judgement in this point; I must say it was from the sense of their expostion of the law and of the statutes, and from the Authority that every one took up Arms for and served them, and obeyed either the one General or the other; I say it was under this very Authority, and this must needs acquit me from all the *guilt* that is laid upon me.

L. ch. Bar. You put your self upon the Judgement of the Court upon this which you call a point in law. First, it is manifest that there is no excuse at all for Treason, no man by his Commission can warrant the doing of an Act which is Treason! you must take notice of the Authority whether it be good or no, your Commission was not to put the King to Death, but on the contrary, to preserve the King's life. The Lords and Commons what they did, we do not medle with; the Reason and Ground of what they did was the preservation of the King's Person, as well as the maintenance of the laws and liberties of this Nation, they made Protestations, Declarations, and Oaths for the preservation of the King's Person; and you could not but take notice of those things: Now whereas you go about to shroud your self under the Lord *Fairfax*, he had no such Power, and therefore you can challenge no more then he had: and to what you say concerning the Judgement of the Parliament, there will be a great deal of difference between a particular Case, and a Declaration of Lords and Commons; there is nothing you have said that hath any thing of Force, and God forbid you should make use of it; But I must tell you, you could not but notoriously know all those Transactions that were in the Army, what the Army had done, That they came up with Swords in their Hands, and turn'd out whom the would; you saw what the Lords and Commons had done, That the Treaty was ready for his Birth; And then you come up with your Mermidons with Force and Arms and Exclude the greatest part of the Members, and then the Lords were laid aside: it is true, the Lords were not

wholly dissolved, but they would not suffer them to Sit nor Act at all, and this was apparent to the Nation. If men under colour and pretence of such things, Namely, that a few persons (for so they were) but an Eight part of the House of Commons permitted to remain, and of that Eight part (which was but 46 in the whole) there were but 26 that Voted that Act which you say you obeyed: but you say you obeyed the General: you were not to obey the General in this Case; for the Facts that you have committed, are not charged as Acts of War; you are not charged for bringing the Souldiers in, but for those Violent Actions that you were guilty of there; you made the Souldiers cry out, *Justice, Justice, Execution. Execution*, you sent Officiously for a *Hang-man* to come down to you; your Commission gave you no power for this, the Death of the King you know how it was designed, you know the Act for the bringing in of that Commission (as they call'd it) to sit in justice was after the House of Commons was reduced to a very small Number, and some of those dissenting too, what you did act under that Authority, if you can justifie it, in the Name of God say so, but do not Engage the Nation in those things which they abhorred, and by the mercy of God are laid asleep.

Mr. *Justice Foster*. You begin at the wrong End, you ought as all men ought to doe. First, to answer the matter of Fact, and not to put in these long dilatory Pleas till you have answerd the matter of fact, whether those things charged on you be true or not; then if you have any thing further to say for your self by way of Excuse, it will be the time to speak, and not before.

Ax May it please your Lordships, I humbly conceive I am upon that method to the first part of the witness, they accuse me for commanding my souldiers in *Westminster-hall*; then I must prove my authority, which I have been about to do, and declared the judgement of Parl.

L. ch. B. The Court have heard you with a great deal of patience, and that which is not at all to the businesse.

Ax. I only refer this as to the authority (I humbly conceive you will give me leave to insist upon this, & how far I may improve it for my own defence) here is the Commission by which my L. *Fairfax* acted & that after the King's death, and I acted by the same authority he did, I had not been at *Westminster-hall* but on the cōmand of the General.

Court. Doth that Commission Authorize you to cry *justice justice?* and to look up and down to get Witnesses against the King, is that in your Commission?

Ax. I am to serve and obey all my Superiour Officers, that is my Commission; if I doe not, I die by the law of War.

Court.

Court. You are to obey them in their juſt commands, all unjuſt commands are invalid. If our Superiors ſhould command us to undue & irregular things (much more if to the committing of treaſon) we are in each Caſe to make uſe of our paſſive not active Obedience.

Axtell. Under Favour, it is not proved, *that I did either Compaſs or Imagine the King's Death*, that is matter of Fact.

Court. Let us try that.

Ax. My Lord, I did nothing but as a meer Souldier, I had Authority from the General, I would leave this before your Lordſhips and the Jury, that what I have done hath been by Authority of the Generall.

L. Hollis. Sir a word to you. If you could ſatisfie the Court that you had received a Commiſſion from the General to do thoſe things with which you ſtand charged, it were ſomething, then were it proper for you to plead it, and the Court to judge. Pray take this along with you, the General gave you no ſuch command, what you are charged with in the Indictment, *is for compaſſing & imagining the Death of the King*, and that by ſuch and ſuch overt acts, As making your Souldiers cry out, *Juſtice and Execution*, for being active and forward in ſending for the *Executioner*, and ſuch other Acts, prove theſe are in your *Commiſſion*, and you ſay ſomething: I am ſure, you cannot be ignorant, that that very Authority that you do now urge to give life and power to your Actions, that you deſtroyed it, laid it in the duſt, acted contrary to it ſeveral waves when the Parliament proteſted againſt fetching the King from *Holmby* as they did, when they went on proceeding in the way of peace, then came you up to the Bar (I think you your ſelf) and charged ſome of the Members; firſt 11 as rotten Members, and theſe Men were forced away; this you know your General had no Commiſſion to doe, and this you know was a Violation of that power that gave our General the Commiſſion. After that when the Treaty was brought on in the *Iſle of Wight*, when there was great hopes of peace, then you knew the King was hurried thence by Force, which the Parliament proteſted againſt. After that when both the Houſe of Commons and Lords came to conſider of one particular that paſſed, they reſolved that it was ſufficient ground to proceed on for the ſettlement of peace; then did you fall upon theſe Houſes and tear them in pieces, and throwing out about 200, ſuffering only about 40 to remain, and they were glad to ſend for one Member out of priſon to make up a Houſe. That which you ſay of the Supreme Authority, and that by Vertue of which you did Act; it ſhewes that you did not at all go by any Authority, but you follow-

followed your own lusts; and therefore do not sew these Fig-leaves together, which will stand you in no stead; if you would apply your self to answer that which you were charged with, it were something.

Axt. I do desire to have no more interruptions then is meet in making my own Defence. My Lord, Here are many things by way of motive urged to the Jury, which is not within the Charge, I desire I may have that fair play, *that nothing may be urg'd but what is in the charge.*

L. ch. Bar. You give the occasion Mr. *Axtell*, keep to the matter and you shall not be interrupted.

Lord Hollis. I shall be very sorry to urge any thing against you which doth not necessarily follow; for what you say touching your Authority, I shall shew you have no Authority.

Axtell. My Lord, I have the same Commission as the General; what I did was not of my own head: I had a command; As for all that hath been charged against me, I shall say this; I was none of the Court, I did not fetch the King from the *Isle of Wight*, nor advised, compassed, or imagined his Death, or sentenced Him to Death, or signed the Warrant for his Execution, or Executed Him; I am none of them. My Lords, and therefore whoever did make any breach upon the House of Commons, they were Grandees, persons of a greater Quality; I was an inferior Officer, I was never at the House Bar, but upon presenting one Petition to the Parliament from the Army. I shall now come to speak to the Evidence which hath been given particularly against me; And the first, my Lord, is Mr. *Sympson*, He saith, I had the commands of the Guards at *Westminster-Hall*. My Lords, I have told you already shewn you by what Authority *I* came thither, and that I ought not to refuse; if I had, according to the laws of war, I must have suffer'd death; and that is all as to Mr. *Sympson*, only that a Lady (he knows not who) spake something there.

L. ch. Bar. He saith, he heard you bid the Souldiers give fire against the Lady.

Axt. My Lord, I must say, if there was any Lady that did speak, who she was, I know no more then the least child here: but my Lord, to silence a Lady, I suppose is no Treason. If a Lady will talk impertinently, it is no Treason to bid her hold her Tongue.

L. ch. Bar. A Lady was speaking pertinently enough, when she heard *Bradshaw* say to the King, such a Charge is Exhibited a charge of High Treason against Him, *in the Name of the Commons Assembled in Parliament, and the good people of England*; she said, *That was a Lye, not half, not a quarter of the people of England, That* Oliver Cromwell

Cromwell was a Traytor; Then you took upon you to command Souldiers to Fire at her; and accordingly they levelled the Muzles of their Musquets towards her.

Axtell. My Lord, as to that particular concerning *Oliver Cromwell*, or any other words concerning the Court, I understand them not; but if any interruption was made, to preserve the peace, to desire a Woman to hold her tongue is no Treason. To the next particular wherein *Col. Huncks* saith, at a dore at a certain lodging where *Ireton* and *Harrison* were in Bed together, He saith, that upon his refusal to sign the Warrant for executing the King, I said to him, Col. *Huncks, I am ashamed of you, the Ship is now coming into Harbour, and will you strike Sayle before we come to Anchor*? truly my Lord I think all that amounts to nothing, if it were so, which I deny it; for to bring the Ship into Harbor, what is that? there is no person named, Fact named, nor Designe named? and I appeal to my conscience, I remember not the time, place, person, or words; and I can call for Col. *Phayre* and Col. *Hacker*, who were there; for I desire things may appear right, I desire they two persons may be called for their Evidence in that point.

L. ch. Bar. They both are in the same condition, Col *Hacker* in the prison behind you, *Col. Phayre*, in the Tower; Mr. *Axtell*, you know the strength of one Affirmative witnesse, I saw such a man, and heard such a man say, *&c.* is more then if twenty should witness they stood by, but did not see him, or hear him speak.

Ax. My *Lord*, He saith only this, I saw you at the dore going unto *Ireton's* chamber, and said, *will you strike Sayl*, &c. Truly my Lord he doth not say, what, or how, or any thing I meant; there must be according to Sir *Edward Cook's 7th.* Book of his *Institutes*, that Oracle of the law: He saith, *That Evidence ought to be as clear as the Sun at noon day*: All that you can say is this; It must be a wide Inference, a large Inference, I conceive there is nothing in these two Witnesses, and if the two Prisoners were here, they would clear me in this.

L. ch. B. If by law you could have had them, you should; but I fear if they could be admitted, they would not be to your advantage.

Ax. Then my Lord, in the next place *Col. Temple* is pleased to say, that the Lady *Fairfax* saying something against the Court (which in truth as I said before, I know not who it was or what the words were) he saith, I bid Fire against them, I did nothing but what I was commanded upon pain of Death, to preserve peace, and in pursuance of that command from the Superior Officers of the Army? silence was

required

required, and that was all that was done. I ſuppoſe where a man is commanded to keep ſilence, as the Sheriff is required to keep all at peace in a Court; if he reſtrain a perſon that will not be quiet, it is not Treaſon in him, nor in me in this particular. *My Lord*, in the next place Mr. *Temple* is pleaſed to ſay, that I ſtood upon the pavement laughing, while others ſighed; Truly my Lord, I know not whether I ſaw the Gentleman or no; certainly ſmiling is no treaſon, if I did ſo, though I believe I had as great a ſenſe that day as many other perſons there; this is the ſum of that he ſaith, only he further adds that I bid the Souldiers cry for *Juſtice*, truly my Lord——

L. ch. Bar. Becauſe it may be your Notes are ſhort, I will acquaint you there was a little more in it, he ſaid you bid the Souldiers cry out, *Juſtice, Juſtice*; and they coming not very readily to it, you ſtruck ſome of them till they with your ſelf cryed out *juſtice, juſtice*, till they with your ſelf did it.

Axt. My Lord, To that I anſwer, that in the Hall there was ſome kind of people did ſet up a crying ſome kind of words, and may be ſome of the Souldiers might cry ſo too, I might command them to hold their Tongues, and to ſay *I'le teach you to cry Juſtice*, and ſo the Gentleman ſtanding by, might believe I was the perſon that bid them doe it: Truly my Lord, is this all that the Gentleman ſayes, which I humbly conceive is nothing, becauſe he does not ſay againſt any perſon; and therefore my Lord, I do hold to that Maxim in the law, as Sir *Edw. Cooke* holds (that man of great parts of learning and knowledge) *That in matters of Treaſon wherein a man is the moſt Highlieſt coucern'd in his life and poſterity there ought not to be conſtrued againſt him Inferences or preſumptions or ſtrains of wit*; there is no more in this, and this is all that I ſay in this particular. In the next place, Mr. *Temple* is pleaſed to ſay, that after the Court had ſentenced his Majeſty, he was hurried away in a *Cedan*: Truly, whether he was or not I know not, There was e Guard of Halbertiers, whereof *Col. Huncks* was one, and ſeveral others as I have heard; they were Sele& Guards of his Majeſty, Guarding him from St. *Jams*'s to other Places: how he came to be hurried I know not, it was not by me: and whereas he ſayes, during the whole Tryal, I was there, truly I think I was there by command of my General by Authority of the Lords and Commons.

L. ch. Bar. You ſpeak this, that the Jury may underſtand you did it by command of your General. Do you mean by expreſs command?

Ax. I did not move a day but by ſpecial command.

L. ch.

L. ch. Bar. By whom!

Axtell. The Lord *Fairfax* gave his Orders every morning to his Adjutant General, or Major General, annd they issued them out to such and such persons as he appoints.

L. ch. Bar. Who gave these Orders out?

Axtell. The Lord *Fairfax*, we did all under him.

L. ch. Bar. You had not the order immediately from him.

Axtell. The Major General had.

L. ch. Bar. What Major General gave you that Order?

Axtell There was *Crommell* and *Ireton.*

L. ch. B. The Lord *Fairfax* gave you no immediate Commission.

Axtell He gave my Superiour Officers.

L. ch. B. How do you know that?

Axtell. My Lord, because they told me so, it was by his command.

L. ch. B. The question is now understood.

Axt. The next person that speaks is Mr. *Bodurdoe*; and he says, that I commanded the Souldiers at the King's Tryal, and that a Lady that was speaking, was commanded silence, to this purpose; Truly (my Lord) this is but the same as before.

L. ch. B. You said *Shoot* too.

Axt. No (my Lord) I said not any such word, or any thing like it, I heard there was an Officer went up and intreated her to be silent, I say it is the same with the former, it is no Treason to desire one to be silent. My Lord, the next Witness that speaks in Evidence against me is Mr. *Young*; he says this, I bid the Souldiers cry for *justice*: it is very like that that person as well as Mr. *Temple* might see me in the croud speaking to make the Souldiers quiet, I might repeat the words that the people said, repeat the word *justice*, or some such word, as the peoples words.

L. ch. Bar. Remember how he repeats them, he saw you active in setting on the Souldiers to cry *justice.*

Axtell. If I have taken them right, one sayes he heard me say such words as Justice and that he saw me strike two or three Souldiers; if in the Tumult such a word should be started, I hearing of them, I might strike those Souldiers that said, *Justice, Justice*, and might repeat the words, *I'le give you Justice*, and so strike them, that is good Evidence that it might be a repetition of their words and not any of mine own: They both speak as to the word Justice, but here was not Justice mentioned to any person, I might

repeat their own words, and chastise them for those words, besides this, (though I do not say the word was spoken by me,) if the word *Justice* had been spoken, my Lord, I hope it is no Treason to say, desire Justice, *it is God's great Attribute, it is God's Ordinance and that can be no Treason.* I have read in Law Books (though but lately) and I cannot find that the word Justice should be made Treason, The there is no person to whom that adjunct doth belong. The next Evidence, my Lord, is Capt. *Jeonur*, he saith, I commanded a Guard truly, several Regiments took their turns as they were commanded by the General, and I as an inferior Officer was there, but that is no more then what was said before, it was done by the Authority of the General; if I had not done it, I had died by the law of War. He saith, there was a cry for Justice, I can say nothing more then I have formerly said, it may be in the Tumult, the Souldiers might do so, and I chastising of them, and repeating that in my chastisement, they might think they were my own words.

L. ch. Bar. Mr. *Axtell*, I would help your Memory, he Swears the last day you encouraged the Souldiers to cry *Execution, Execution.*

Axt. For that particular I am coming to it, (*I thank your Lordship for helping me*) My Lord, for that of Execution, truly, I cannot say whether I was there that day or no; one day I was commanded to be there with some Companies in *Westminster-Hall*, but whether I was there any more then that one time, is the Question: Admit I was there that day, I was never there but when I was commanded; and the Colonel that commanded the Regiment was there, I as an Inferior Officer ought to be there: I was there by a special Order, and not by a Voluntary Act of mine own, and so it cannot be *Compassing the death of the King.* For to the word *Execution*, what can be the sense of this word? *Execution*, is a single word, those people that started the word *Justice*, might put it in the heads of the Souldiers, which I might strike to command silence, they likewise might upon the same account, cry out *Execution*; and so to hinder all Tumults and Hubbubs and the like in the place, I might repeat their words in correcting of them for it, I might say, *I'le justice you, I'le Execution you*: But my Lord, this word *Execution of justice*, it is a glorious word, not that there can be an inference that what they did I should say was Justice, or to approve of any thing that they did, but only in general *Execution of justice*, which my Lord, relates not to any person, possibly the rude people might be speaking (as it hath been said before) in that manner, and the Souldiers might take it up, and I might

prove

ve them, and make use of their own words by word of repetition *I will Justice you, I will Execution you.*

My Lord, in the next place, I do observe to speak that of Mr. *Burden*, he did observe to your Lordships and the Jury, my Countrymen, my Brethren, with whom are the issues of life and death, for whose life they must answer before the Lord as to Righteousnesse, Judgement, and Equity; I say my Lord as to Mr. *Burden*, he tells you, that for my sake, he was imprisoned; saith he, *I have suffered much by him*, and speaks it with much indignation of spirit, I have suffered and been imprisoned by him, and afterwards he comes to prove his Evidence; how much his Evidence may be of Force, I desire my Lord, the Jury may consider of that; and then he comes and saith, *I* commanded a Guard at the Banqueting-house in *Whitehall*. Truly my Lord, the Lord *Fairfax* commanded a Regiment to quarter there, and I as an inferior Officer might be there; in the next place, my Lord, he saith, I sent *Elisha Axtell* to Fetch the Hangman; Truly my Lord, I wonder this person is come from *Ireland*, (if this were so) the Authority there would not send that person with his great Evidence as well as this person; he may as well charge any person with this as me: It is evident, *Ireton*, *Harrison* and *Cromwell*, they did all amongst themselves; I never was with them, amongst them, received no command from them, nor obeyed them; nor did any thing but what I had command for from the General, who by the Law, I was bound to obey as a Souldier. I shall only observe one thing more; this person being so long a prisoner, to Extricate himself out of his imprisonment and chaines, poor man! he may say more then is true. I wonder he should say I sent for the Executioner, I never knew of any circumstance touching consultation about his Death, or took him prisoner. When they sent to me to be one of His Guard, I never would go; I humbly conceive there is nothing sticks upon me in this, considering the circumstances and the words of the person that spoke them.

My Lord, the next person that speaks against me, is Mr. *Cooke*, and he saith, he heard me say, *Thrust that Lady down that made a disturbance in the court*, or words to that purpose: it is probable there might be a desire of silence. The next Evidence is Lt. Col *Nelson*, He saith that upon a Discourse——

L. ch. Bar. I would put you in remembrance, lest you should forget what Sir *Purback Temple* said, That by leave of persons under your command, *he saw the body of the King*. It is only a Circumstance.

Axtell. I have heard there were Chirurgions, Phisitians and Barberteers, appointed by whom I know not, they had the care of such things, and had the keeping of him, he was locked up by them, no body could come in but by them, I never had a Key; possibly Col. *Temple* might come to me quartering there, and desire me to speak to some persons that had the charge of it to let him in, whether I did or no I cannot remember, but if it were so, I hope it will not amount to Treason. The last thing given in Evidence against me is by *Nelson*, he saith that upon some discourse between us, he was asking what person cut off the Kings head, and that I should say *Hewlet*, &c. Truly my Lord I was never privy, and I appeal to Mr. *Rushworth* if he were here, who was Secretary, if ever he saw me in any Counsel to advise or Act or any thing in that kind in relation to the King, Tryal, Sentence or Executi n; for me to know the person that was imployed about the Execution, it is strange when (as I said before) they did all within themselves. *I* had no knowledge thereof, and medled not with any thing, but within my own Sphear, as a Souldier under my L. *Fairfax*, by Authority of Parliament. For naming of any person; truly my Lord it would be a wonder to me that I should name any person, to go to do any person that wrong and injury to say he was the person, *I* must invent it, for *I* knew nothing of it. But by common fame up and down the City, it was said to be, another person, but who it was *I* cannot say my *Lord*, but to all this that hath been said against me, there are but two things upon two Witnesses that are placed upon me, the First my Lord here is two Witnesses for crying *Justice, and Execution.*

L. ch. Bar. I think you have more then two to those words.

Ax. Not for both together. *L. ch.* B. No but several for *Justice*

Ax. There is three to that, *I* shall onely say this to your Lordship and this Jury in whose hand this life of mine is, and is committed to them either to acquit or condemne me, and God knows the heart of all men, and my innocency and integrity, *I* shall say nothing to the Witnesses, it is a day of Temptation; and *I* desire the Jury my Countrymen, my fellow Citizens, my Brethren, that they would well consider of it, the word, *Execution* and *Justice*, admit *I* had said them (which my Lord *I* do not *I* must not Grant) there being an uprore of people, there such words might be used, and possibly Souldiers might take them up from them, and Chastising the Souldiers *I* might repeat the words, *I will Justice you, I will Execution you.*

L. ch. Bar. The Evidence is that you beat them because they did not readily cry *Justice, Justice.*

Axtell.

Astell. It might be more probable I beat them, because they did do it, I might chastise them for doing of it, and repeat it as a reason for their Chastisement, and admitting it was true, which I grant not, yet I hope Justice and Execution of Justice, as it is so great an Attribute of God, by Gods Laws nor Mans Laws is no where made Treason, but Mercy attends it, and Judgement attends the contrary; I leave it upon the consciencies of the Jury, to weigh it carefully how I could be guilty of *Compassing or Imagining the death of the King*, when nothing is charged against me to be either of Councel, Sentencing or Signing or to be at the Execution, only one man, as I told you before, he spoke something crumbly and that he had uttered much, and therefore he is come over now, and saith I should send for the Executioner, which I never knew of, or had any hand in sending for, how much guilty that hath, I leave to the Jury, if it were so, it is not treason, for words may make a Heretique, not a Traytor; I speak that by way of preface, I do humbly conceive that these being only noted words *Execution* and *Justice* the King took so much offended, nor any thing done to it by me, I say I conceive it doth not amount to treason by the law; and besides it is against the law of the great Judge, the Judge of Judges; all of us, that are now, and are to come shall stand before him to receive our defects, I say it is against the Law of God *to make me an Offender for a word*; for a word, I have heard the Judges say that the Lawes of *England* are grounded upon the Laws of God, and the Laws of *England* are Laws of mercy, not of rigor; my Lord if a man shall be destroyed in his Life, in his Posterity for a word (admit the thing had been so) I leave upon the Consciences of my Jury, before the presence of Jesus Christ, and before whom they and I must come to be Rejudged again in the Tribunal; and besides it is onely words and words uncertain; and Sir *Edw. Coke* saith, he must declare plain truth in matter of Treason, nothing must be taken for Evidence that may be a presumption or inference, or strain of wit, I hope upon this consideration that the word justice fixed upon me by two witnesses may be taken up at second or third hand from the people or Souldiers by Chastising them for the Tumult. Then my Lord in the next place, these words were never penned or writing, and so not Treason; then my Lord there was never an overt act done by me, For that Act of Indempnity that his Majesty and both Houses of parliament passed, wherein they were pleased the very last to except me, I wonder'd when I came to be excepted of that number, I doe come back to the place where I left, and that is the overt act. My Lord I would only bring it in in this place, when I was excepted by the house of Commons, one of the twenty, I was excepted thus not extending to Life, I went up and down free at noon day, I did not hide my self, Ingaging a person that was one of his Majesties servants to do me a courtesie, he promised he would do it, and contrary to his promise he was pleased to bring the Kings Warrant to carry me to the Tower, and after that I came to be excepted with that Black Catalogue of excepted persons, and to be brought to the Tryall of the Law. Now my Lord, I return to that overt act as it was but words uncertain, and they may be words repeated from the third or the fourth hand, soe they were not put in writing; according to that Act of Indempnity which I understand the meaning of to be thus, That for their Exectable Treasons in Sentencing, Signing or otherwise Instrumental, they are excepted out of this Act and to be Tryed according to the Laws of the Nation; I understand that to be Instrumentall, to be Instrumentally the Executioner of the King, I never had any hand in that. Upon the whole this is the fact that is proved by two witnesses, they heard me say *Justice and Execution*, which must relate to the *Execution of Justice*, which

which by the Law of God is not Treason, especially when there was not the
King; for a word to take away and destroy so many, my Life, Wife, Children
many Fatherlesse that are under the Charge of the prisoner at the Bar is very
the words I do not frame but upon such probabilities as I have said; I might
peat them, *I will Justice you, I will Execution you*, and then the words were
written, I say as Sir *Edw. Cooke* said, they may make a Heretique but not a
tor, the other part of the Evidence is this, that I was there with Souldiers at
minster-Hall, I must say if that be Treason to be guided by Judgement of Lords
Commons in Parliament, I must say if that be Treason to take up Armes for a
ament upon such Grounds and Expositions of the Statute which they have
and published by their own Authority, if I am Guilty under the General, then
parliament would be guilty of Treason.

L. ch. Bar. That you have spoke to —— I am loath to interrupt you.

Axt. I thank your Lordships for informing me, but I was commanded
there by my General, if I had not gone I must have Dyed, I did onely stand
for preservation of the peace, in no other sense, If the General order me to be
such a Randezvous, I must be there; if I disobeyed he would have condemned
by the Law of War. The next things against me material are these two thi
that is that I should send one *Elisha Axtell* for the Executioner, I must say it is
Admitable such things should be laid to my charge, I hope your Lordships and
Jury do observe, he told you he suffered much, and a poor man under his ex
mities and losses and sufferings, perhaps might start some unadvised words,
being now sent over may acceraine it. But doubtlesse this *Elisha Axtell* be
Ireland, if by command it had been so, would have been sent over, truly I must
I had no hand in the businesse, it was left wholy to them amongst themselves,
what ever was done, or whatever was said, it was said and done by them, I
was acquainted with any thing of that nature, he saith he heard I should
Elisha Axtell for an Executioner, if hear sayes may be Treason it will be a
Lessons; and my Lord, Sir *Edw. Cooke* saith there must be two witnesses, here
but one. It comes from such a man, My Lord as the providence of God
but I will say no more as to that, but pray the Jury will take notice of it.

L. ch Bar. You need not doubt of it, it shall be taken notice of, this of Burden.

Axtell Now my Lord I have but two or three words more, the Statute of
25th. of *Edw.* the Third, it doth intend private persons, my Lord here is my Com
mission.

L. ch. Bar. It is owned, you had it from your General.

Axtell. My Lord, his Majestly is pleased to say in his Gracious Letter, we do
these presents declare, *That we do grant a free and General pardon to all our subj
of what degree or quality whatsoever, who within Fourty dayes after the publi
hereof shall lay hold upon this our grace and favour, excepting only such persons as
hereafter be excepted by Parliament, that is a Parliament called by his own Writ. To
know this Parliament* ——

L. Ch. Bar. Mr. *Axtell*, I would not interrupt you to that, but this very Ob
tion was made by one of the prisoners before, this answer was given; first
King's Declaration is not a Pardon in point of Law, it must be under the
Seal; but God forbid but it should bind in honour. You instanced, in the wo
Parliament, what was meant by the word Parliament: you must know
the exigency of the Times were such, that there was many Noble Persons,
took the Advantage to Assemble themselves together to reinstate the King,
did that which was just and lawful, according to the exigency of the Times:

Decla

Declaration he ſent to the two Houſes, he called them His two Houſes, ſo that it appears clearly and manifeſtly, they were then ſitting, they being accepted by the King and owned by Him; and they did ſit in way of Convention, according as a Parliament, and the people took them for a Parliament, and his Majeſty ſent his Meſſage to them; and theſe are the perſons that have thought fit to except you out of this Act.

Ascell. My Lord, may I ſpeak to that any further?

Lch. Bar. If you doe, it will be over-ruled.

Ax. I ſubmit —— with ſubmiſſion to the providence of God; I did apply to Sir *Harbottle Grimſton* for the Mercy and Favour of his Majeſty, according to his Declaration; and here is Sir *Harbottle*'s own Hand for a Certificate.

Lch. Bar. That is allowed you that you did Claim that benefit within the time, but you may remember that it was referred to thoſe two Houſes of Parliament, they were to conſider who was fit for the Pardon, and you are by them Excepted out by Name: Your queſtion now is no more, but *whether Guilty or not guilty*, & theſe are but extravagant Diſcourſes that you ſay otherwiſe, & rather do you harm then good.

Ax. I hope you will pardon me, my Lord, I hope I have ſpoken to clear the Point; The Fact charged by your Lordſhips and before the Jury; and I hope the Court will give the Jury a Memory of it, and a right Underſtanding in what I have ſaid for my own Defence. My Lord, the next thing I have to offer, is this, to Expound that Act of Parliament, that it was the intention of his Majeſty and Parliament, that all ſhould be excepted but thoſe guilty of Counſelling, Signing or Sentencing. Truly my Lord, I humbly conceive, I being none of thoſe, am not guilty of Treaſon. I ſhall only ſpeak one Word to my Jury, That they will remember what I have ſaid, that there is but two Things, two Witneſſes; as to *Juſtice* and Execution, that it relates to no perſon but in Generall; and then I do not own the thing, but poſſibly they might hear ſuch words, I taking of them up upon a reproof, reproved the ſouldiers; for the other that I ſhould ſend one for the Executioner (he heard ſo) and that I ſhould name who was the Executioner, I would not have that perſon or any other to ſuffer for that.

Lch Bar. That is not at all preſſed upon you, nor as to any Charge.

Ascell. I thank your Lordſhip. I am very ignorant.

Lch. Bar. Have you done Sir?

Ax. I leave the matter to the Jury, in whoſe hands I and my little Ones, and Family are left, I only ſay this to you, Remember your Anceſtors, remember your Poſterity. I never heard it before that words were Treaſon. In Queen *Maries* time *Throckmorton* was acquitted for words, by the Jury. Gentlemen of the Jury I leave my Caſe, my Life, my All, in your Hands.

Lch. Bar. Gentlemen of the Jury, There hath been ſeveral things offered by the Priſoner at the Bar, as near as my Memory will give me leave in ſo long a Diſcourſe. I ſhall repeat all things which he ſaith for himſelf, and which are ſaid againſt him. There are ſome things that he ſeems to utter as tending to matter of Law, and ſomethings meerly of Fact, proper only for you of the Jury. For matter of Law, he hath urged ſeveral things for himſelf, not by way of juſtification of the Fact, (I muſt do him that right,) but in excuſe of himſelf, and I hope his conſcience hath ſo wrought upon him, that he is of opinion, the Fact was a horrid Fact, which was ſo indeed.

For that which he hath ſaid for himſelf; Firſt, he doth alledge to have his Commiſſion from the Lord *Fairfax*: My Lord *Fairfax* had his Commiſſion from the

the two houses of Parliament, and this Gentlemans was in *March* the beginning of the year 1648. he saith what he did was in obedience to his superiors, as a soldier; that he never consulted or advised about any thing of the tryall or execution of his Majesty. For this point it hath already been spoken to. Gentlemen, for that which hath been spoken to at large heretofore I must repeat it here that he may know it. That no person whatsoever, no Community, not the people either collectively or representatively have any coercive power over the King, neither the *L. Fairfax* his Generall, not he, nor any other person could be excused for this horrid fact of bringing the King to tryall. No person, as I said before, nor Community have any such power. The Law-books which he hath lately seen (and truly he hath imployed his time well in that) the Law-books tell us, that whereas the two *Spencers* had broached a damnable & detestable principle, that the hommage was only due to the K. in respect to his Crown, that if he did not demean himself according to such & such rules his subjects might rule him *per aspertee* by asperity and sharpness; but this was condemned by two Acts of Parliament, they both appear in my *L. Cooke* in *Calvins* case. I do not go to repeat all the evidence that might clear this truth, I say, had there been any such thing, but it hath been told him there was no such thing in fact. My *L. Fairfaxes* commission was for the preservation of the King, as well as for the liberties of the people. The 11. of *Rich.* 2. *Robert de Vere* and others for levying a war was punished, but this Gent. was not charged for levying of war. If either of the houses of Parliament should command such a thing as tends to the death of the King it would be void in it self. Something he let fall of the Parliament not being dissolved. My Masters, for that you have heard some of my Lords declare how and in what manner this was an Authority of Parliament, but it was clearly nothing at all, this Gentleman goes by Vertue of a power from the Lord *Fairfax*. The next thing he urges in point of Law was this, he comes by way of Dilemma, saith he, either I must obey my Generall or dye by the law of war. He goes further, and urges the Statute of 11. *Hen.* 7. He comes further and saith in the 25 *Edw.* 3. that concern single persons, truly it concerns every man. The Indictment you see how it is laid, *It is for imagining and compassing the death of the King.* The overacts in the Indictment you have heard what they are, there must be more then one witness for Treason. It is very true, but if one person proue one thing, another person another, if two swear he did cry *Justice, Justice, Execution, execution*, and another swear some other part, Gentlemen this was here before delivered to you for an overact. It is any thing that opens and makes it appeare to the Jury that he did do the things for which he is indicted, I say any one of these that they did meet together, and did counsult in order to the putting the King to death. That they did meet in a trayterous Assembly about the Kings death. I shall say no more, you need not I think go from the Bar.

The Jury go together, and after a little consultation among themselves, they returned to their places.

Clerk of the Crown, Gentlemen of the Jury are you agreed of your verdict.

Jury. Yes.

Cl. Who shall say for you? *Jury.* Foreman.

Cl. Daniel Axtell hold up thy hand. Gent. Look upon the prisoner at the bar. How say you, is he guilty of the high Treason whereof he stands Indicted, and hath been arraigned, or not guilty? *Foreman.* Guilty.

Cl. Look to him Keeper. What Goods and Chattels.

Jury. None to our knowledge.

The Tryal of Colonel *Hacker* the ſame day 15. *Octob.* 1660.

Clerk of the Crown, Set *Francis Hacker* to the bar: (which was done accordingly.)

Cl. Fr. Hacker, hold up thy hand. Theſe men that were laſt called are to paſſe upon you, &c. If you will challenge all or any of them, you muſt challeng them when they come to the book, before they are ſworn.

Lord chief Baron, You may challenge 35 peremptorily, but no more.

Hacker, My Lord, I ſhall challeng none.

Tho. Bide, *Rob. Sheppard*, *Will. Dod*, Sr. *Tho. Allein*, Sir *Hen. Wroth* *Tho. Morris*, *Ralph Halſal*, *John Galliard*, *John Nicol*, *Tho. Uſman*, *Tho. Nicoll*, *Chriſtopher Abdy*, in all Twelve. The Jury called and ſworn.

Cl. of the crown, Proclamation, if any man can informe my Lords the Kings Juſtices, &c.

Cl. Francis Hacker, hold up thy hand; look upon the Priſoner, you that are ſworn of this Jury. You ſhall underſtand that *F. Hacker* priſoner at the bar ſtands indicted, &c.

Mr. *Serj. Keeling*, My Lords, and Gentlemen of this Jury, *Francis Hacker*, the priſoner at the bar, ſtands indicted, amongſt others, for compaſſing and imagining the death of the late King *Charles* the Firſt of happy Memory. The compaſſing and imagining is the Treaſon it ſelf: the other points, as *convening*, *aſſembling*, *meeting*, *together*, and the actual villany that followed all theſe are but as Evidences of that imagination. As to this perſon at the bar our Evidence will lie thus. We ſhall make it appear to you, that he was one of the perſons that were upon the Guard, and kept the King a Priſoner, that he might be ſure to be brought to that *Mock-Court of Injuſtice*. Then it will appear to you, That this Priſoner at the bar was highly truſted by all thoſe Miſcreants that thirſted for the Kings blood, by their bloody Warrant directed to him and others, to take the Kings Perſon into cuſtody, and to ſee Execution done. This was the perſon that kept him till he brought him to that fatal ſtage. That this warrant was lately brought from

his own house by his own wife to the house of Lords, and then we shall shew you that this person set his hand to the warrant to the Executioner for Execution. That he did not do it ignorantly nor unwillingly, for he heard the warrant read: we shall make it appear that he was upon the Scaffold, and had the ax in his hand.

Councell. Cryer, call *Holland*, *Sympson*, Col. *Tomlinson*, Mr. *Nunnelly*, Mr. *Nutly*, *Hercules Huncks*, and *Benjamin Francis*, who were all sworn as witnesses.

Councell. Mr. *Sympson*, speak your knowledge of the employment of the prisoner touching the tryal and Execution of the King.

Hacker. My Lords, I will confess what I know in this case, to save your Lordships the trouble. I confess I was upon the Guard, and had a warrant to keep the King for his Execution (*the Warrant being shewen to the prisoner, he confessed that to be the Warrant.*)

Councell. After you had that warrant brought to you, did you by vertue of that direct another Warrant for Execution of the King? Did you not take the King (then prisoner) from the custody of Colonel *Tomlinson*?

Hacker. No Sir.

Councell. We shall prove it, the warrant was read, *At the High Court of Justice for Tryal*, &c. My Lord at the time that this warrant was signed, the person of the King was in the custody of Col. *Tomlinson*, did not you take and demand from Col. *Tomlinson* the person of the King assoon as you received that warrant?

Hacker. No Sir I demanded him not.

Councell. Col. *Tomlinson* tell my Lords the manner of that business.

Tomlinson. My Lords and Gentlemen of this Jury, I shall as my memory enables me, make a faithfull Narrative of this business: I had indeed to do with the guard, that had to do with the person of the King about St. *Jamesses*, being then an Officer of the Army, a Colonel of horse, when the King came to St. *Jamesses*: it was observed by some, that there was too great an access of people admitted to the King, and within one day or two after, there was a party of Halberteers appointed for the further observing the guard: they were commanded by three Gentlemen, of whom this prisoner

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at the bar was one; the orders every day for removing the person of the King were commonly directed to four persons and those were my self, L. Col. *Cobbet*, Cap. *Merryman*, and one more: but the guards that still went along were the Halberteers. So that every day when the King did go to *Westminster*, he went to Sr. *Robert Cottons* House, and so far *I* went with him and no farther. I never went with him nor saw him at that pretended High-Court of Justice. When he used to go to the High Court of Justice, commonly (every time indeed) the Serjeant, *Serjeant Dendy* (as *I* remember his name was) he used to come and demand, that the King should go to the High Court of Justice, and Col. *Hacker* did ordinarly go with him, with the Halberteers. *It* was my custom to stay in the room till he came back again, these Orders continued, during the time of his tryal. After the *S*entence was given, on the day whereon the *E*xecution was to be done, it was ordered (which order may be produced if significant) that the guards that were for security of the person of the King, should cease when a Warrant from the *H*. Court of Justice for the *E*xecution should be produced; I would not omit any thing that *I* well remember; and this *I* remember, that the night before the Execution, the King called me into his Chamber and told me several things; I will take the occasion to trouble you with a short discourse of it, he told me of some legacies he had given, he told me he had prepared something that he would speak the next day, and in the close of it he desired me, that *I* would not leave him (for I speak it in truth) there were many times several incivilities offered to him, and though I was upon a duty, that was of a harsh and unpleasing nature to me, and did desire several times to be released from it, (as *I* believe is well known to some) yet I did not admit at any time that any incivility should be offered to him; people would take Tobacco before him, and keep their hats on before him, *I* alwaies checkued them for it, he was pleased to have a consideration of that care, that *I* had in that capacity *I* then stood. That very night before his death he was pleased to give me a *L*egacy, which was a gold tooth-picker and case, that he kept in his pocket. The next day when the Warraut came, the guard of *H*alberteers went with him through St. *James*es Park, I wa present walking neer the King, the Bishop of *London* (now of *Canterbury*) was with him and some others. As we were going

thorough the Park, he was pleased to discourse something of what he had been discoursing before touching his burial, he wished that the Duke of *Richmond* and some others that he should bring should take care of it. That morning in the Park, he told me he had been thinking of what he had said the night before. He told me he had some thoughts that his Son might come to bury him, and desired he might not suddenly be buryed; I gave him assurance I would communicate his desire, and so *I* did: when he came to *Whitehall* he went into a room in the Gallery (*I* know not the name) the guard stood in the outer room there. There was a Gent. that came to me there, & told me he was endeavouring to present a Letter from the Prince to the King, & told me he could not get an opportunity, *I* said he should not want an opportunity if *I* could help him, it was Mr. *Hen. Seymor*, it was delivered and the King read it, and he gave several things in charge to Mr. *Seymor* to acquaint the Prince with, and was pleased to mention to him, something of civility that I had shewn him in his imprisonment, the effect and fruit of it I find, and do most humbly acknowledg before al the world my thanks to his most gracious Majesty the King & to the Lords & Commons. After Mr. *Seymor* was gone from him, (I do not well remember the time, whether it was twelve, one, or two, a clock;) Col. *Hacker* came in, and there was present with him the two other Gentlemen that were named in the warrant (as I remember) *I* am sure Col. *Hacker* (if my memory fail me not) did produce the warrant. My self and those Gentlemen that were concerned in the former orders looked upon this warrant; By which the Orders which we had were at an end. *I* must confess, *I* did not nor none of those did tell him that the orders for security of his person were at an end, but Col. *Hacker* did go in to him, and after a litle while Col. *Hacker* comes to the door, and the King was coming forth, and he told me that the King desired *I* should go along with him, and indeed the night before when the King told me that he had prepared something to speak, he desired I would not leave him. So Col. *Hacker* led him forth, the Bishop of *London* followed him, and *I* followed the Bishop of *London*, the guards were prepared without; and they went on to the Scaffold; when we came to the Scaffold *I* went so farr as to the entrance upon it, the King was upon it and had looked a litle while about it, and was thinking to have spoken over, but he turned about to me and began

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to direct his speech to me: *I* cannot trouble you with what the King said, for *I* cannot remember it, but that Col. *Hacker* was there in prosecution of that Warrant, and upon that warrant our orders were at an end. I do aver.

Councell, You delivered him upon that Warrant did you?

Toml. He went and received the King upon that warrant; it was a chamber that was known then by the name of the horn-Chamber, and there the King was in the inner room: this is the substance of all.

Councell. We will trouble you with one or two witnesses more.

Councel. Mr. *Tomlinson*, did Mr. *Hacker* or his Souldiers take Tobacco to the Offence of the *King*.

Toml. *I* do not say that any tobacco was taken there by Mr. *Hacker*, but the Souldiers would be stepping in, and take tobacco at his chamber in *St. Jameses*, and committed other incivilities.

Councell. We have proved, that the Prisoner did demand, and had the person of the *King*: now we will prove to you, that himself had the boldness to make a Warrant in pursuance of the former, for execution of the King,

Councel. Cryer call Mr. *Huncks*.

(*He being sworn said.*)

Huncks. My Lords, and Gentlemen of the Jury, that day the *King* dyed, a litle before the hour he dyed, *I* was in *Iretons* chamber, where *Ireton*, and *Harrison*, were in bed together, there was *Cromwel*, Colonel *Hacker*, Lieutenant Colonel *Phayer*, *Axtell*, and my self standing at the door, this Warrant for the execution was there produced, and you (looking upon Mr. *Hacker* at the bar) were reading of it, but *Cromwell* addressed himself to me, commanding me by vertue of that Warrant, to draw up an order for the Executioner; *I* refused it, and upon refusing of it there happened some cross passages, *Cromwell* would have no delay. There was a litle table that stood by the door, and pen, ink, and paper being there, *Cromwell* stepped and writ, (*I* conceive he wrote that which he would have had me to write) as soon as he had done writing, he gives the pen over to *Hacker*, *Hacker* he stoops and did write (*I* cannot say what he writ), away goes *Cromwel*, and then *Axtel*; We all went out, afterwards they went into another room;

Councill. What followed?

Huncks

Huncks. Immediately the King came out and was murthered.

Mr. *Secretary Morice*, Mr. *Huncks*, you did tell us in the Tower (when we were sent by his Majesties Councel to examine you, and others there) that Col. *Hacker* did then sign that warrant for nominating and appointing the execution.

Huncks, My Lord, *Cromwel* comes to me, and bids me write a Warrant for that purpose; I refusing of it, *Cromwel* writes himself, and *Hacker* writing to the same paper, what should I conceive, but that it was the Warrant? (the King presently after coming to Scaffold.)

Councel, Did *Cromwel* give you no bad names, because you would not write that order? Did not he say you were a Coward?

Hunks. He said *I* was a froward peevish fellow.

Councel, Did *Hacker* only write his name, or give directions in the drawing up of the Order.

H. I conceive he only writ his name.

Councel, My Lord, we have only that eye-witnesse.

H. *Hacker* confessed to the Gentleman-Jaylor of the Tower, that if he did do it, he did it by order.

Mr. Secr. Morice, *and the L.* Annesly *sworn*

Councel, Mr. *Secretary*, we desire you will be pleased to tell my Lords what Col. *Hacker*, the Prisoner at the bar, did confess to you and others touching this business.

Mr. *Secretary*, When Colloncl *Huncks* (for that title he now assumes) was brought over out of *Ireland*, and committed to the Tower of *London*, there was three of the Council, by order of the Board, sent to examine him, Sir. *Anthony Ashly Cooper*, Mr. *Annesly* & my self: *In* obedience to that order, we repaired to the Tower, and had Colonel *Huncks* brought before us, we told him, that he (being one of those which was appointed by warrant from the supposititious high Court of Justice, to carry on the execution of the King and see it done) must needs know who was the Executioner: whereunto he answered, that he for his part did not know who was the Executioner; for the Warrant whereby the Executioner was nominated and appointed, was refused to be signed by him, but Col. *Hacker* signed it, and therefore Col. *Hacker* must know it. Accordingly upon our return we made our Report to the Board, and upon this there was an Order, that Colonel *Hacker* should be

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sent for, taken into custody and brought before the Lords of the Councill: Accordingly he was apprehended, and the same three Councellours were sent down to examine him. We took him into a private room, and examined him, and told him (amongst other things) that he being the man that (as we were informed) did sign the warrant, for the nominating and appointing the Executioner, doubtless he must needs know who that was, at first he said he did not sign this warrant: I told him, *I* would have him well advised that he said. For if you deny it, it will be proved by such a Man, naming Collonel *Huncks*, and that you will do your self a great prejudice if you deny that; saith he, *I do believe I did sign the warrant for appointing the Executioner*, that is all I can say.

Lo. Annesley Gentlemen of the jury, it is very true as you have been told already, that I was amongst those that the Council sent, to the *Tower* of *London*, first to examine Collonel *Huncks*, and Mr. *Cook*, that hath been condemned, *Hulet* and some other prisoners. We did examine Colonel *Huncks*, and he did by his examination acquit himself from signing that warrant, that he was charged with, being one of the three, appointed to see execution done, but they appointed another, to signe the Warrant, (Col. *Huncks* refusing) and upon his refusal (as he said) *Cromwel* that urged him to it, said he was a cowardly fellow, or something to that purpose: when we examined him about the person in the *Frock*, he said, he knew nothing of that, but that C. *Hacker* signed that warrant for Execution; this examination being reported to the Council, the Lords sent for *Hacker*. *I* think upon notice, Colonel *Hacker* came, he had been of the Army and continued till that time an Officer: when he came thither, the Lords of the Council having notice of it, commanded the same persons formerly appointed, to go out and examine him, we had him into a little room belonging to the Clerks of the Councill, and examined him to that point concerning the Man that cut off the Kings head, whether he knew any thing of it: he did affirm positively he did not know, we told him that it was the man, by testimony, that signed a warrant for execution of the King, and then certainly he must know the person that he appointed by his warrant; he said, if I did sign any warrant, it was by command of the General, that being but hypothetical, we thought it meet to make it more positive, whereupon

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we asked him whether he was the Man that ſigned the Warraut or no. Thereupon (as I remember, and as the examination which was all written with mine own hand doth help my memory) he did ſay he did believe he did ſign ſuch a Warrant; thereupon he was asked further how could it be poſſible, that he could forget the man if he ſigned the Warrant, he knew who the man was that was appointed, he ſaid for that, that he did believe the warrant was read to him, and that therein the mans name might be, but he could not now remember his name, this was the effect of his examination and confeſſion.

Councel, Mr. *Francis*, did you ſee Colonel *Hacker* at the time of the execution upon the Scaffold?

Francis, Yes, *I* did ſee him as a principal Commander there, I was comming out of *Weſtminſter* into *London*, about half an hour before the King came upon the Scaffold, coming near the ſcaffold, as ſoon as I was engaged in the throng, (when I had paſſed above 8 or ten yards) I could not paſſe backward nor forward. I was inforced to ſtand there: during that time, *I* ſaw the ſcaffold and the Ax, and the block, taken up by divers people, and principally I ſaw a man that is not here, he is in cuſtody, *I* ſaw him take it up, and try it with his Thumb, and lay it down, this was *James Berry*, he came off, and came not upon the ſcaffold again unleſs diſguiſed.

Councel, Did you ſee *Hacker* there, did you ſee him upon the ſcaffold when the King came on?

Francis, I did ſee him, he was there, his Majeſty came to the ſide of the ſcaffold next to St. *Jameſes*; he looked that way and ſmiled, after a while the block and ax lying down about the middle of the ſcaffold, there was a black cloath hung about the rails of the ſcaffold.

Councel, We have another Evidence, the Priſoner hath confeſſed enough but we have proved that he had the King in cuſtody, he confeſſed that he believed he did ſign the Warrant, and that he at the time of execution was there to manage it. What do you ſay for your ſelf?

Hacker, Truly my Lord, *I* have no more to ſay for my ſelf, but that I was a Souldier and under command, and what *I* did was by that Commiſſion you have read.

L.Ch

L. ch. *Baron*, Can you deny any thing that Mr. *Secretary* and Mr. *Annesly* have declared?

Hacker, I cannot tell what I might then say, the Gentlemen were very strict with me, truly I have been no Councellour, nor adviser, nor abettor of it, but in obedience to the command over me I did act. My desire hath been ever for the welfare of my countrey, and that Civil power might stand.

L. ch. *B.* Have you yet resolved who you gave the Warrant for execution to?

Hacker, No my Lord, I delivered none.

L. ch. *B.* But you know who it was directed to.

Hacker, No indeed my Lord, be pleased to ask Col. *Hunks* whether I read this warrant or no.

L. ch. *B.* This is all you have to say for your self.

Hacker, Yea my Lord.

L. c *Bar*, Then Col. *Hacker*, for that which you say for your self, that you did *it by command*, you must understand, that no power on earth could Authorize such a thing. No command in such a case can excuse you. There is a two fold obedience, a passive obedience, to suffer, rather than do things unlawful, & an Active obedience, to do that only which is lawful: & therefore this will not excuse your obedience to those unlawfull commands.--Gent. of the Jury you see the Prisoner at the bar stands indicted for *compassing* and *imagining*, the death of the late King, and there are several open Acts set forth in the Indictment which tend to prove that matter: one is assembling and meeting together, another is sitting upon the King, another sentencing, & at last concludes with the murther of the King as the consequence of all. Any thing that tends to the proving of this compassing and imagining his death, in any one of these particulars, that is an evidence to you to prove the whole indictment. This Gentleman was commander of Halberteers, *Col. Tomlinson* saith, that though he kept the Guards that were about the Kings person, this Gentleman with two other persons, brought Halberteers, that there might not be such frequent access as formerly to the King, there is one Act. He commands these *Halberteers* at that time when the business was in agitation, before that high court, as they called it. You see after the sentence was given, that he was one of the persons to whom the Warrant for Execution was directed, you see afterwards there was a consulting together,

Cromwel, *Ireton*, *Harrison*, and *Axtel*, were in the chamber, when Col. *Huncks* refused to sign: the prisoner signed the warrant, but knows not the person, to whom it was directed: you see besides, Col. *Tomlinson* testimony, who saith further, that when they were discharged, Col. *Hacker* went in and the King was brought out presently after to that fatal place, Col. *Huncks* swears, that when that Warrant was offered to him he refused it, that *Hacker* the prisoner at the bar, signed a warrant, though he doth not remember the name of the person to whom; it appears by two witnesses (honourable persons) he confessed he signed it, but he did not know the person to whom directed. You see another witness; *Benjamin Francis* he saith, he saw *Hacker* upon the Scaffold with the King.

He doth not deny the fact, you need go no further, it is very plain he had a hand in this business a principal agent in it, he that brought the King to the Scaffold, he that had the care of managing that business, he that signed the warrant to the Executioner, either he is guilty of compassing the death of the King, or no man can be said to be guilty.

The Jury went together, and after some little consultation, returned to their places.

Clerk of the Crown, Gentlemen of the Jury, are ye agreed on your Virdict?

Jury, Yes.

Clerk, Who shall say for you?

Jury, Our Foreman.

Clerk, *Francis Hacker* hold up thy hand, Gentlemen look upon the prisoner at the bar, how say you, is he guilty of high Treason, whereof he stands indicted, and hath been Arraigned, or not guilty.

Forman, Guilty.

Clerk, look to him keeper.

Clerk, What Goods and Chattells, &c.

Jury, None that we know off.

Book.

Octob. 15. 1660. the Tryal of *William Hulet.*

Clerk of the Crown, Set *William Hulet* to the Bar (who was brough accordingly). *William Hulet* alias *Howlet*, hold up thy hand. Those persons that were last called of the Jury are to passe &c. If you will challenge them, or any of them, you must challenge them when they come to the Book before they be sworn.

L. Ch. Baron. Understand you have power to challenge five and thirty men, and not above, You may challenge them without cause shewn. If you have cause for any other, you may challeng them also. If you will have pen, ink, and Paper, you may have them.

Hulet, Truly my Lord, *I* cannot write but a very little, I shall not need them. I did not understand my indictment well, I desire to hear it again.

L. ch *Baron*, You will hear it read again.

Clerk. Sir *Thomas Allen*, Sir *Henry Wroth*, *Thom. Bide*, *Robert Sheppard*, *Thomas Morris*, *Ralph Halsal*, *John Gallyard*, *John Nicoll*, *Tho. Usman*, *Christopher Abdy*, *Will. Dod*, in all twelve. Jury called and sworn.

Cl. of the Cr. Will. Hulet alias *Howlet*, hold up thy hand. You Gentlemen that are sworn, look upon the prisoner.

Cl. You shall understand, that he stands indicted of high Treason, by the name of *Will. Hulet* alias *Howlet*, late of *Westminster* in the County of *Middlesex* Gent. for that he as a false Traytour, &c. (*here the indictment was read*) Unto which indictment he hath pleaded not guilty, and for his tryal hath put himself upon God and the country, which country You are; Now You charge is to inquire, &c.

Sir *Edward Turner*, May it please your Lordships and you Gentlemen that are sworn of this Jury, we are now entering upon the last Act in this sad tragedy of the Murther of the late King, there have been before you some of the Judges, the Councel, the Chaplain, and the Guard, this Prisoner at the Bar, in the last place was one of those which came with a frock on his body, and a vi-

zor on his face to do the work. The course of our evidence will be this, first we shall prove by witnesses that saw him, and knew him, that he was thus disguised: he hath confest that he was upon the Scaffold, that he hath had several preferments, and I fear it will appear that it was he that gave that fatal blow, for he hath confessed he had an hundred pounds given him for his service therein, and we doubt not, but to pluck of his vizor by and by. The indictment is for compassing and imagining the death of his late Majesty of glorious memory; if we prove to you any circumstantiall *overt-act*, whereby you shall be convinced of this, you are to find him guilty.

Richard Gittens sworn.

Councel, Mr. *Gittens*, tell my Lord and the Jury what you know touching the prisoner at the bar.

Gittens. The thing is this my Lord, this Gentleman at the bar and my self were both in a Regiment in one company as Serjeants, about twelve or thirteen years together. About a day or two before the King came to the Scaffold, Colonel *Hewson* did give notice to a Lieutenant, that we should come to him, about 38. of us, and he put us all to our Oaths, that we should say nothing of what they did; he swore us to the book; after he had sworn us, he asked us if we would undertake to do such an Act, if we would, we should have an hundred pounds down, and preferment in the Army as long as that stood, and the Parliament. Afterwards we refused every person, we thought Captain *Hulet* did refuse: after all refused, it seems, he did undertake to do the deed. When the King was brought on the *Scaffold*, we were in *Scotland-yard*, and they were upon the Guard in the Banquetting-chamber: when they were there *I* laid down my Armes and got into the company; Captain *Webb* kept the Guard, with his Halbert in his hand, by the *Scaffold*, and *I* did bustle to come near to them; then I returned back. *Hulet* (as far as I can guess) when the King came on the *Scaffold* for his execution, and said, *Executioner* is the block fast? then he fell upon his knees.

Councel, Who did?

Gittens, *Hulet*, to ask him forgiveness, by his speech I thought it was he; Captain *Atkins*, who would not undertake to do this fact, *I*, told him, *I* would not do it for all the City of *London*, no not *I* neither

neither for all the world, saith *Atkins*; you shall see *Hulet* quickly come to preferment: and presently after he was made Captain Lieutenant.

Councel. Was he with his Regiment that day?

Gittens. We could not see him with the Regiment all that day, he was never absent at any time before.

Councell. Did you know his voice?

Gittens. Yes Sir.

Councell. Did you mark the proportion of his body, or his habit, what disguise he was in?

Gittens. He had a pair of freeze trunk breeches, and a vizor, with a gray beard, and after that time Colonel *Hewson* called him father Gray-beard, and most of the Army besides, he cannot deny it.

Hulet, I desire as to this witness, he doth alledge that he and I were Serjeants in one company, which *I* deny, he was not in that company I was in, I desire to know of him how he comes to know that I was there at that time.

G. By your voice.

Hulet, I will swear that this man was with the Regiment, under the Scaffold, where were you at that time when the act was done?

G. Where was I, by Captain *Web?*

H. Where was he?

G. At the door of the Banqueting house.

H. Was you on the Scaffold or no sir?

G. I was on the Scaffold end.

H. My Lord I desire you to consider what this person saith, he saith he was upon the guard in *Scotland* yard, and at the Scaffold with Captain *Web.* My Lord I desire again, whereas he said *I* had a gray beard, let any man besides himself say, that ever *I* was called by that name gray beard throughout the Regiment.

Stammers sworn.

Councell. What have you to say concerning the prisoner at the Bar?

St. He was Captain Lieutenant to Colonel *Hewsons* troop, when I had entred my self into that troop, I was awhile in *Dublin*, and *I* was commanded by the prisoner at the bar, *I* and the rest, to march to a place called *Lutterells* Town, about 5 miles beyond *Dublin*

Dublin, the prisoner at the Bar came thither to us two days after, then being in his chamber he sent for me up, I went up and sate down, he examined where I had served, I told him *I* did formerly belong to the Lord of *Inchequin*, he asked me if *I* was ever in the Kings Army, with that he walks about the room two or three turns, saith he, I was the man that beheaded King *Charles*, and for doing of it, I had an hundred pounds, saying, *I* was a Serjeant at that time.

Hulet, *I* desire to ask him a question, I confesse (what is your name?)-----

Councel, *Stammer* his name is *Stammers*.

H. Such a one was under my command. I think I have not seen You these eight Years; I desire to know when these words were spoken and the place.

St. I say in *Lutterells* town in your own chamber, and that was nine or ten years agoe.

H. It is about eight years ago since I left that command; who was by at that time?

St. No body.

Hulet, It is strange. How long had you been in the Troop before?

St. I was in *Dublin* about a fourtnights time, then you sent for me and *I* came to *Lutterels* Town; the first time that I came to the troop was at *Dublin*, and then you came to me with two Orders from *Hewson*, and then you did pretend you was brother to one Mr. *Chambers*, and then we went and quartered in *Lutterels* town.

H. My Lord, his examination in *Ireland* and this doth not agree, you did denie this before *Baldwin* a Trooper, I desire his examination may be read; (*which was accordingly read, and agreed with the testimony now given*) I desire he may mention what man that was that *I* sent for him.

St. I cannot tell what man.

H. My Lord, *I* desire that servant may be either named or produced.

St. I cannot remember the man, it is seven years ago.

H. Then again upon another accompt, as he speaks before that *I* should examine him where he had been, and that he should say at the Lord *Inchequins*.

Cap-

Captain Toogood *sworn.*

Toogood, I shall first give your Lordships and the Jury what I have heard others say concerning the prisoner at the bar, and that is first Colonel *Hewson*: *I* was in the year 1650. about *September*, in *Dublin* Castle, about some business with *Hewson*, Captain *Hulet* the prisoner at the bar, came in to the room, he talked with Colonel *Hewson* a little while, I observed them very familiar, and *I* asked *Hewson* what he was, he told me he was his Captain Lieutenant of horse, *I* desire to know where he had him, he told me he made him so from a Serjeant, and a very mettled fellow he was, it was he that did the Kings business for him upon the Scaffold. *In* the year 1653. there was a disbanding of the Army in *Ireland*, this Gentleman was then continued Captain Lieutenant in *Pretties* Regiment, *I* discoursed with *Pretty* concerning him, and one part of it I remember, was about the Kings death, and he did tell me that he was assured by Colonel *Hewson*, that *Hulet* either cut off the Kings head or held it up, and said, *behold the head of a Traytour*: Colonel *Pretty* would not tell me which of the two it was, but *I* saw the person that did it, and me thought he did resemble this person. About 12. moneths after *I* came to live near the prisoner in *Ireland*, once *I* remember at one Mr. *Smiths* at the White-horse in *Carlow*, *I* met him there, and I was asking the prisoner at the bar the question, whether he was the man that cut off the Kings head or not, saith he, why do you ask me this question? I told him *I* had heard by several, namely by *Hewson* and *Pretty*, upon that he said, well, *what I did I will not be ashamed of; if it were to do again I would do it*; once since that time, about half a year afterwards, I was in the same place, and there talking with him about the Kings death, he was telling me it was true, he was one of the two persons that was *disguised* upon the Scaffold. *I* desired to know, what if the King had refused to submit to the block? saith he, there were *staples* placed about the Scaffold, and *I* had that about me that would have *compelled* him, or words to that effect; other times I have heard him speak something to this. *November* the last in the Queens County at *Maryborough* Col. *Jones* took upon him to be Governour: and to choose two out of a Regiment that might be the rulers of the people, Legislators, *I* think they call'd them, I did discourse about the business again, and

did

did oppose it all: after a while he began to be very hot in the business about *Lambert:* said *I*, you were heretofore too forward, says he, if it be the business of the Kings head, *I* will never deny it, call me to an account when you will: *I* have observed in *Ireland*, that it hath been generally reported, that he was either the man that cut off the Kings Head, or that held it up, as I said before, and I have heard them sometimes call him *Grandsire Graybeard.*

Hulet. My Lord, I do confess *I* know the Gentleman very well, we were in a Regiment together, I never discoursed with any concerning this, but only once at a place going from *Cullen* to *Munster*, we did drink at a place called *Goran*; we were discoursing about the business of the King, the justification of the cutting off his head; saith *Stammers*, I did hear that you were one of the persons for that purpose; said I, they that say so do me wrong: saith he, it is no matter if you were so, for it was a just act: said *I*, whether it was or no, *I* have nothing to do to justifie it, he was speaking as I hope to be saved I would have done it.

Walter Davies Sworn.

Councel. What can you say, Mr. *Davies*, to this business.

Davies. Gentlemen, that which I can say is this: in *January* last was two years, *I* was at *Dublin*, *I* met Captain *Hulet*, he invited me to take share of a pint of Wine; *I* went with him to a Tavern; when we were in the Tavern he called for a pint of wine, and I called for another; before we had drank out the last pint of wine, said *I* to Captain *Hulet*, I pray resolve me this one question, it is reported that you took up the Kings head, and said, behold the head of a Traytour; Sir, said he, it was a question *I* never resolved any man, though often demanded, yet saith he, whosoever said it then, it matters not, *I* say it now, it was the head of a Traytour.

H. I confess we did meet together, as you say, but I must and do deny the words.

Lieutenant Collonel *Nelson* sworn.

Nelson, My Lords and Gentlemen of the Jury, upon a discourse with Col. *Axtel* as I related once this day, about six years since, many other discourses we fell to discourse about the death of

the late King, I supposing he had been acquainted with that affair, desired him to tell me those two persons disguised upon the scaffold; he told me I knew the persons as well as himself, saith he, they have been upon service with you many a time: pray Sir, said I, let me know their names; truly saith he, we would not imploy persons of low spirits that we did not know, and therefore we pitcht upon two stout fellows; who were those said I? It was *Walker* and *Hulet*, they were both Serjeants in *Kent* when you were there, and stout men: Who gave the blow said I? Saith he, poor *Walker*, & *Hulet* took up the head; pray said I, what reward had they? I am not certain whether he said thirty pounds apiece, or thirty pounds between them.

Hulet, Pray let Mr. *Axtel* speak to this, he is hard by.

Colonel Tomlinson *sworn.*

Councel, Pray tell my Lords your knowledg in this business.

Tomlinson, My Lords and Gentlemen of this Jury, I cannot punctually remember what their habits were, but they had close garments to their bodies, they had hair on their faces, one was gray to the best of my remembrance, the other was flaxen colour.

Councel, Can you tell who struck the blow?

Tom. My Lord, I cannot remember, but I think he with the gray hair on his face did it.

Nelson, My Lord, *I* will not positively say it, but it came lately to my mind that I did hear in *Ireland* by Col. *Pretty* that *Hulet* did it; my Lord, this Col. *Pretty* is alive in *Ireland*.

Ben. Francis sworn.

Francis, My Lords and Gentlemen of the Jury, as to the Prisoner at the bar, he was very active in that horrid act, there was two of them had both clothes alike, their frocks were close to their bodies (as I remember) they were rather in Butchers habits of wollen, one had a black hat on his head cockt up, and a black beard, and the other had a gray grisled periwig hung down very low, I affirm, that

He that cut off the Kings head was he in the gray perivvig, and I beleeve this vvas about that mans ſtature (*pointing to Mr. Huet*) and his beard vvas of the ſame colour, if he had any. I vvas coming from *Weſtminſter*, the ſcaffold vvas encompaſſed vvithin, vvith a great guard of Souldiers of *Redcoats*, I think commanded by *Biſcoe*.

Hulet, Was you upon the Scaffold?

Francis, No Sir, there was none of my conſtitution upon the Scaffold.

Councel, Fuller evidence I think cannot be expected, you have heard all the Witneſſes, what can you ſay for your ſelf?

Hulet, My Lord, here is ſeveral witneſſes examined concerning the buſineſs, and for my part I do not underſtand the Law: I muſt leave it to the Court. I can upon the other accompt prove where I was at that very time, I can in the next place my Lord, ſince *I* came into *London*, for I did not hear it before, I can tell you, who was the perſon that did that act, I can bring fourty and fourty witneſſes that will prove who they were that did it, as I have been informed by everal Witneſſes, that they know who was the perſon that did it: upon the other accompt I can prove where I was that day, but I did not know when I was arraigned, what was laid to my charge: Here was ſome examinations taken before my Lord Mayor concerning the perſon or perſons that did that act: (here he offered a paper, a copy of the ſaid examinations, ſubſcribed *Mary Brandon* and divers others.)

Mr. *Secretary Morrice*. Was you not examined in the Tower?

Hulet, Yes Sir.

Mr. Secr. *Morice*, Did not we tell you, that you were charged with cutting off the head of the King?

Hulet, Yes Sir you did tell me ſo.

L. Ch. *B*. Then you had time to provide your witneſſes.

H. I was a cloſe priſoner.

L. C. *B*. Where were you on the day of execution?

H. I was priſoner then at *Whitehall*.

L. Ch. *B*. For what?

H. Upon this accompt we were taken up, about ſeven or nine of us were taken up, we were all Serjeants, three of Col. *Hackers*, the reſt of *Prides* and *Fairfaxes*, and about ten of clock at night were diſcharged.

L. Ch. *Baron*

L. Ch. B. For vvhat vvere you impriſoned?

H. For refuſing to be upon the Scaffold.

Burden. It vvas a Common ſpeech among the Souldiers that *Hulet* cut off the Kings head.

L. C. B. Hovv long before did you ſee *Hulet* upon the guard.

Burden. The day before, but not that day, nor the day after.

L. C. B. *W. Hulet*, the evidence againſt you is 2 fold, one concerning the cutting off the Kings head, the other that you vvere in a frock. If it be proved that you did not cut off the Kings head, yet if you vvere in a frock in that place it vvill not excuſe you, if you have any thing to ſay I vvill be glad to hear it.

Hulet. I deſire the perſons may be examined upon oath, priſoners and others, who was the perſon that did it, I mean *Hacker*, *Huncks*, and *Phayer*.

L. ch. B. You that are the priſoner, for that which concerns *Hacker* and *Phayer*, you know what conditions they are in, one already tryed for his life, the other a priſoner in the Tower; and *Hacker* ſaith himſelf, he doth not know the perſon at all; you that are priſoner at the bar, the Court conceives you have had time to get your witneſſes here, you were informed of the buſineſſe before you came here, yet notwithſtanding, it is conceived there are ſome here that can ſay ſomething tending to the information of the Jury, but they are not to be admitted upon Oath againſt the King.

Sheriffs Officer examined.

Sheriffs Officer, My Lord, all that *I* can ſay in this buſineſs is this, one of our fellows that belongs to our Maſter the Shrieff, *John Rooten* by name, he and I were talking about this very ſtory, and he did acquaint me with this. That he was in *Roſemary-Lane* a little after the Execution of the King, drinking with the Hangman, that he did urge him whether he did this fact. God forgive me, ſaith the Hangman, *I* did it, and I had 40 half crowns for my pains.

Abraham Smith examined.

Smith, My Lord, aſſoon as that fatall blow was given, I was walking about *White-Hall*, down came a file of Muſketeers, the

firſt vvord they ſaid vvas this, vvhere be the Bargemen. Anſvver vvas made, here are none, away they directed the Hangman into my boat, going into the boat he gave one of the Souldiers a halfe crown, ſaith the Souldiers, waterman away with him, be gone quickly, but I fearing this Hangman had cut off the Kings head, I trembled that he ſhould come into my boat, but dared not to examine him on ſhore for fear of the Souldiers, ſo out I lanched, and having got a litle vvay in the vvater, ſaid I who the Devil have I got in my boat? fayes my fellow, ſayes he why? I directed my ſpeech to him ſaying, are you the Hangman that hath cut off the Kings head? no as I am a ſinner to God ſaith he, not I, he ſhook every joynt of him, I knew not what to do, I rowed away a litle further and fell to a new examination of him, when I had got him a litle further: tell me true ſaid I, are you the Hangman that hath cut off the Kings head? I cannot carry you ſaid I, no ſaith he, I was fetcht with a troop of horſe, and I was kept a cloſe priſoner at *White-Hall*, and truly I did not do it, I was kept a cloſe priſoner all the while, but they had my inſtrumens. I ſaid I would ſink the boat if he would not tell me true, but he denyed it with ſeverall proteſtations.

William Cox examined.

Cox. When my Lord *Capell*, Duke *Hamilton*, and the Earl of *Holland* were beheaded in the Palace yard in *Weſtminſter*, My Lord *Capell* asked the Common Hangman, ſaid he did you cut off my maſters head? yes ſaith he, where is the inſtrument that did it? He then brought the ax: is this the ſame ax are you ſure, ſaid my Lord? Yes my Lord ſaith the Hangman, I am very ſure it is the ſame: my Lord *Capell* took the ax and kiſſed it, and gave him five pieces of Gold, I heard him ſay, firrah wert thou not affraid? ſaith the Hangman, they made me cut it off, and I had thirty pound for my pains.

Richard Abell examined.

Abell. My Lord, in the houſe of one Mr. *Bramſton* I did hear Gregory himſelf confeſs that he cut off the Kings head.

L. Ch. B.

L. ch. B. You that are the prisoner at the bar; the Court is willing to give all full scope as far as may be to examine the truth of the fact; as they would not condemn the innocent, so they would not acquit the guilty, do you desire further time to examine the truth of it, before it be put upon the Jury?

H. I do confesse I do not understand the laws, *I* desire *I* may have a little further time: I desire the Jury may be withdrawn, *I* desire a fourtnights time, but submit to the Court.

A Stranger Examined.

Stranger, My Lord, *I* was with my Master, in the company of *Brandon* the Hangman, and my Master asked *Brandon*, whether he cut off the Kings head or no? He confessed in my presence that he was the man that did cut off the kings head.

Lord chief Baron, You that are the Prisoner at the bar, the Court was willing to give you as much time as they could by Law: The Jury hath been charged, and evidence given, all those Witnesses have been examined that we could hear of now, for your advantage, *I* will say something to you. It was here said, and given in Evidence, that *Axtel* did send a boat to fetch the common Hangman, if we knew more that might tend to your advantage it should be repeated. You Gentlemen of the Jury, mark it? There is first *Gittens*, he swears that he was in the same Regiment that you were in twelve or thirteen years together, he saith that he and others were called together upon their oaths, and you amongst the rest, and there was an oath of secrecy, asking them if they would do such an act, they all refused to do it, so did you: but he said, the day of execution of the King, this *Gittens* got among them, and one Captain *Web* kept the door, and he saw you fall before the King, and ask the King forgiveneſſe, he said he heard your voice, and so knew you: and that the day after Captain *Atkens* said, you shall see *Hulet* shortly come to preferment, & he saith he did not see you in the Regiment that day, and that *Hewson* and all the Regiment used to call you *Father Graybeard*. *Stammers* he saith, that you was Capt. Lieutenant to Col. *Hewsons* Troop, and you comming to *Lutterels* town, you asked him several particulars, whether he had been in the Kings Army, walking up and down

down you said, you were the man beheaded King *Charles*, and for that you had one hundred pounds; this he swears positively. *Samson Toogood* he swears, he saw you come to Col. *Hewsons* in 1650. you talked to him very familiarly; when you were gone he *asked* who you were, he told him you were a Captain Lieutenant of horse, and he said, that you were a very mettled fellow, and did the Kings business upon the Scaffold: that afterwards, Colonel *Hewsons* Regiment being discharged, you came to be of *Pretty's* Regiment, and that he told this Gentleman, that he was assured by Colonel *Hewson*, that it was you, that either cut off the Kings head, or took it up and said, *Behold the head of a Traytour*. He saith afterwards, that in 1654. in *Carloe*, he asked you the same question, and you demanded of him who told him? He answered he was told by several persons, namely *Hewson* and *Pretty*. You said, what I did *I* will not be ashamed of, and if it were to do I would do it again. He sayes again at another time, that you were one of the two persons who were then upon the Scaffold, and that there were staples to enforce the King to submit, if he strugled. *I had that about me which would have done the business*. And he sayes, in *November* last you came to a meeting upon a summons of Colonel *Jones*, and then did avouch *Lamberts* quarrel, he said you were too forward heretofore: you said, If it be the business of the Kings head, *I* will never deny it, call me to an account when you will. He heard many call you *Grandsire Graybeard*. Then there is another witness, *I* think his name is *Davies*, he was in discourse with you, drinking two pints of wine; It is reported (sayes he) you took up the Kings head, and said, *Behold the head of a Traytour*: and he desired you to resolve him whether it was so or no: you said again, it had been demanded often: but you never resolved any man: you said, whosoever said it then, *I* say now, *It was the head of a Traytour*. *Nelson* he swears, that about six years since he was in discourse with *Axtell* about it, and *Axtell* told him they were a couple of stout men to your knowledge (speaking to *Nelson*) I was one to do in that affair: we made choice of two, *Walker*, and *Hulet*, who gave the blow? *Walker*, but *Hulet* took up the head. Colonel *Tomlinson* he saies, that there were two on the Scaffold, one that had a gray beard, and the other somewhat flaxen. *Nelson* also heard by Colonel *Pretty* that you

did

did it: and then *Ben. Francis* he sayes, they had both Frocks alike one a black beard, one a gray grisled periwig, and believes he was about your stature. This is the substance of what the witnesses have said against you; Gentlemen you hear what has been proved on behalf of the Prisoner, that is, if you believe the witnesses that are not upon oath, that *Branden* confessed it, and denyed he did it, severall Witnesses that say *Brandon* confessed he did it, and that he told them of a sum of money that was given him. Gentlemen of the Jury, you see the whole point in this case, the indictment is for compassing and imagining the death of his late Majesty; the Evidence goes two waies, part of the witnesses one way, part another way, if you believe either of them, then you ought to find that the defendent is guilty: if either he was in the frock, though he was not the man that did it, or if you find he did it, it is a clear testimony of his Imagining and Compassing the death of the King. Now it rests upon you to consider the Evidence that is given for the Common Hangman, that he should be the man that did it: that the Prisoner at the bar did not cut off the head; on the other side, if you do believe he was one of the two in the Frocks, upon the relations of these persons, *Pretty*, *Hewson* and *Axtel*, if you believe it upon these relations, and after his own confession, that if he was to do it again he would do it; then upon this evidence that is given you, he is to be found guilty, though he did not cut off the Kings head. You have heard the Evidence on all sides, it rests upon you, pray go together and consider of your Verdict. I have forgotten one thing, God forbid I should omit any thing that may be as well for advantage as against the Prisoner at the bar: if you take it singly, if you have nothing of other proof, what another man saies of me doth not charge me, unless there be something of my own, what you have heard from himself, and what you have heard by relations from others, that is to be left to you. It is my duty to tell you, that which is said by another of me, that alone is not a pregnant evidence; you must remember withall, what is sworn positively, what he said himself: this being said, I must leave it to you. Pray go together.

After

After a more than ordinary time of consultation, the Jury returned to their places.

Clerk, Are you agreed of your Verdict?
Jury, Yes.
Clerk, Who shall say for you?
Jury, Our Foreman.
Clerk, *Will: Hulet* alias *Howlet*, hold up thy hand. Gentlemen look upon the Prisoner at the bar, how say you, is he guilty of the high Treason, &c?
Foreman, Guilty.
Clerk, Look to him Keeper. What Goods and Chattells?
Jury None to our knowledge.

And then the Court adjourned till to morrow morning seven a clock in this place.

16th. *October*, 1660. Sessions-House *Old-Baily*.

Proclamation of the Court.

Clerk of the Crown. Set *Isaac Penington*, *Hen. Marten*, *Gilb. Millington*, *Rob. Tichbourn*, *Owen Roe*, *Rob. Lilburn*, *Hen. Smith*. *Edm. Harvey*, *John Downs*, *Vincent Potter*, *Aug. Garland*, *Simon Meyne*, *James Temple*, *Pet. Temple*, and *Tho. Wayte*, (in all fifteen) to the bar, which was accordinly done.

Clerk of the Crown, You the Prisoners at the bar, those of the Jury that were last called are to pass, &c. if you or any of you will, challenge all or any of them you must challenge them when they come to the Book before they be sworn.

Charles Pitfield, *Christopher Abdy*, *Richard Cheyney*, *George Tirrey*, *Daniel Cole*, Hall, *Richard Abell*, *Edmund Starnel*, *Edmund Pitt*,

Sir, Will. Witcomb, Fran. Dorrington, and *T. Nicoll,* called and ſvvorn of the Jury.

Cl. of the Crown, Iſaac Penington, Henry Marten, &c. Hold up your hands. Gent. that are ſvvorn look upon the Priſoners at the Bar. You ſhall underſtand that the ſaid *Iſ. Penington,* &c. together with, &c. (*here the indictment was read*) Unto which they and every of them have ſeverally pleaded Not Guilty, and for their tryal have put themſelves upon God and the Country, which country you are: now your charg is to enquire &c.

K. Coun. May it pleaſe your Lordſhips and You Gentlemen of the Jury, the Priſoners at the bar ſtand indicted of high Treaſon, for Compaſſing and imagining the death of the late King *CHARLES* the Firſt of Glorious Memory. The indictment ſets forth ſeverall *Overt-acts,* by vvhich that imagination doth appear, the Treaſon it ſelf is the compaſſing: Our Evidence will go on thus: We ſhall prove againſt them all, that they did ſit (in that vvhich they called the High Court of Juſtice) upon the King, vvhilſt the King vvas a Priſoner at the bar, moſt of them did ſentence him, all but *Harvy* and *Penington* did ſign that bloody Warrant for his Execution, and that one of the Priſoners at the bar vvas in before the High court of Juſtice conſulting of bringing it about. When vve have proved this I think it is enough. Pray call the Witneſſes.

Harvey, My Lords, according to my duty *I* ſhall ſave this honourable Court all their trouble. I do humbly acknovvledg, that I vvas and did ſit, in that court, but *I* did not ſign and ſeal that Warrant.

L ch. *B.* It is very true Mr. *Harvey.*

Har. I hope your Lordſhips and this honourable bench will give me leave (in that time which you ſhall appoint) to ſhew you my reaſons that I did it not of malice, and it was an errour not of Will, but of Judgment; what I have to ſay will be (though not for the annihilating) yet for the extenuation of my crimes

Lord Chief Baron. Say now what you will, only consider with your ſelf, whether you have not already ſpoken as much as you can for the Extenuation of it, ſay what you can further.

Harvy. Let me ſpeak a word.

L. ch. Baron. Go on Sir.

Harvey. My Lord, I do humbly conceive, if I had conceived that I had then done any thing of Treaſon, I would not for all the world have been there. I was preſent when his Majeſtie did not own the Court, deſiring that both his Houſes might meet, that he might have a Conference with them for ſettling of the peace: My Lord, heartily and unfeignedly I did endeavour that that Advice might be embraced, and that no ſentence might be pronounced. I was one of thoſe (with ſome others) that did ſo far promote it, that that which they called the High Court of Juſtice, did withdraw to conſider of it, but the major part of it did diſſent. But my Lord, *I* was ſo unhappy as to return to the Court, though with reluctancy; I went with a reſolution not to go more to them, nor never did; I was ſummoned to come to the Court; I did declare I abhorred the thing, that my ſoul had reluctancy againſt it, and I was greatly greived and troubled at it, and *I* did refuſe any more to come, or to conſult about any thing that followed in order to his Majeſties death, and to ſign and to ſeal. And that I may make it appear to your Lordſhips, I pray *I* may have a witneſſe or two examined.

Lord Chief Baron. Name them. Did he ſit upon the day of ſentence?

Counsel. Yes he did, he followed it.

Mr. *Edw. Corbet* examined.

Mr. *Corbet.* My Lord, the atteſtation which I this day make ſolemnly in the holy fear of Almighty God, and in awful reverence of this great Tribunal, hath only this great ſcope, that Colonel *Harvey* the Priſoner at the Bar, upon that day of ſigning the Warrant for that horrid execution of his moſt Excellent Majeſty, not in title only, but in reality, he finding me as

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I was passing to the duty of my place in the Assembly of Divines then sitting, he seized on me, and desired privacy of time and place, that he might disburthen his soul and spirit unto me, it was then about nine a clock in the forenoon to the best of my remembrance.

L. C. B. What day *I* beseech you?

Corbet. To the best of my remembrance upon the Monday; Sir, sayes he, I desire to make known unto you the deep horrour that sits upon my spirit, the sadness and grief above all expressions that my present case has cast me into; *I* have endeavoured Sir, sayes he, in the sight of God all that possibly *I* could, to divert them from the Sentence, I could not prevail. Sir, sayes he, this morning I have been sollicited with very much earnestness, that *I* would go and sign, and seal, and order, that wicked Execution, which my soul abhors, and Sir, that *I* might be removed and withdrawn from all temptations and sollicitations of such a wicked fact, I beseech you spare me your time this day, which *I* did, in the presence of another Divine, till four a clock that afternoon, and then *I* parted, and went to *Westminster*, to sign and assist that which I did apprehend my bounden duty, the vindication of the Assembly of Divines, wherein we did testifie, that it was far from our thoughts to advise the Parliament to any such unheard of unnatural act.

Councel. We do admit that after he sat and sentence past, that he did not sign.

Harvey. Be pleased to call one Mr. *Tho. Langham*, he hath heard me often declare against that act.

Mr. *Tho. Langham* examined.

Lord Chief Baron. What do you say Mr. *Langham* as to this businesse?

Langham. Sir, about the time that his Majesty was executed in 1648. I was then servant to Alderman *Sleigh*, who was formerly partner with this Colonel, and he frequently came to Alderman

Sleigh's every night, and the Alderman having some busineſs with him, would ask him what newes there was in the high Court of Juſtice: he uſually told him the paſſages thereof any day, the Alderman asked him if ſo be he thought his Majeſty might eſcape, he told him this, that he would do what lay in his power that he might; that he might not come to have ſentence paſt, upon *Saturday* being alſo there, he told him this, that he had done what lay in his power to hinder the ſentence, but could not attain his deſign, but he was reſolved he would never ſign, nor ſeal to his *Majeſties* death, for it was utterly againſt his Judgment.

Harvey. There is another (my Lord) and but one more that is *George Langham.*

L. Ch. Baron. To what purpoſe? This is believed.

Harvey. I ſhall only crave and ſupplicate this favour of this honourable bench, that this honourable bench will be pleaſed on my behalf (ſince *I* have endeavoured it two moneths before) to preſent my humble petition to his ſacred Majeſty, and to intercede for mercy and favour on my behalf, my ſelf, my wife, and thirteen Children ſhall humbly pray.

The Court received the ſaid petition, and promiſed to preſent it to his Majeſty.

Millington. I do not know whether it will be ſeaſonable for me to interpoſe now *I* would ſpake a litle.

L. Ch. Baron. Is he next in order.

Clerk. No my Lord, *Penington* is next.

Penington. I am unwilling to be troubleſom to the Court. This *I* ſhall take the boldneſs to ſay; (which ſhall be nothing but truth) *I* never had a hand in plotting, contriving, malicious practices againſt his Majeſty, demonſtrated by my utterly refuſing to ſign the warrant for his Execution, though often ſollicited thereunto, I cannot deny but I ſat amongſt them that day of the ſentence, but *I* cannot remember I was there when the ſentence paſſed. My ſitting amongſt them was out of ignorance, *I* knew not what

that I did, therefore I hope you will believe there was nothing of malice in any thing I did, I was misled to it.

L. Ch. *Baron.* I cannot hear you (he not speaking aloud.)

Penington. It was ignorance, not malice that did lead me, if I had known what I have done, I would not had done it, I humbly pray that there may be a favourable construction made of it, I humbly leave it with you. I did my duty to pray for the King, but had no malice to act willingly against him.

Clerk. Henry Marten.

Councell. He did both sign and seal the precept for summoning the Court, and the warrant for Execution, sat almost every day, and particularly the day of sentence.

Marten. My Lord I do not decline a confession so as to the matter of fact, the malice set aside, maliciously, murderously, & trayterously.

Councell. If you have any thing to say to that, we will prove it.

L. Ch. *Baron* That I may inform you in it, there is malice implied by law, malice in the act it self, that which you call malice, that you had no particular intention or design against the Kings person, but in relation to the Government, that will not be to this present business; if it should extenuate any thing, that would be between God and your own soul, as to that which is alledged in the indictment. *Maliciously, Murderously,* and *Trayterously,* they are the consequences of law; if a man meet another in the Street and run him through, in this case the law implies malice, though but to an ordinary watchman, there is malice by the law in the fact, if there was no such expressed personal malice as you conceive, yet the fact done implies malice in law.

Mr. Solicitor Generall, My Lord, he does think a man may sit upon the death of the King, sentence him to death, sign a warrant for his Execution, *meekly, innocently charitably, and honestly.*

Marten.

Marten. I ſhall not preſume to compare my knowledge in the Law with that of that learned Gentleman, but according to that poor underſtanding of the Law of *England*, that I was capable of, there is no fact that he can name that is a crime in it ſelf, but as it is circumſtantiated. Of killing a watchman, as your Lordſhip inſtanced, a watchman may be killed in not doing his office, and yet no murder.

Lord Chief Baron. I inſtanced that of a watchman, to ſhew there may be a malice by Law, though not expreſſed, though a man kill a watchman, intending to kill another man, in that caſe it is malice in Law againſt him; ſo in this caſe, if you went to kill the King when he was not doing his office, becauſe he was in priſon, and you hindred him from it, the Law implies malice in this; it is true, all actions are circumſtantiated, but the killing of the King is Treaſon of all Treaſons.

Juſtice Foſter. If a watchman be killed it is murder, it is in contempt of Magiſtracy, of the powers above; the Law ſayes, that contempt adds to the malice.

Councel. We ſhall prove againſt the priſoner at the Bar (becauſe he would wipe off malice) he did this very merrily, and was in great ſport at the time of the ſigning the Warrant for the Kings execution.

Marten. That does not imply malice.

Ewer ſworn.

Councel. Come Sir, you are here upon your Oath, ſpeak to my Lords and the Jury, you know the priſoner at the Bar very well, you have ſometimes ſerved him, were you preſent in the painted Chamber 29. *January.* 1648. at the ſigning the Warrant the Parchment againſt the King?

Ewer.

Ewer, The day *I* do not remember, but *I* was in that chamber to atteud a Gentleman there, *I* followed that Gentleman (looking at Mr. *Marten*) *I* followed that Gentleman into that chamber.

L. ch. *B.* After what Gentleman?

Ewer, Mr. *Marten* my Lord, *I* was preſsing to come near, but I was put off by an Officer or Souldier there, who told me *I* ſhould not be there; *I* told him *I* was Ordered to be by that Gentleman. My Lord *I* did ſee a Pen in Mr. *Cromwells* hand, and he marked Mr. *Marten* in the face with it, and Mr. *Marten* did the like to him: but I did not ſee any one ſet his hand, though *I* did ſee a parchment there with a great many ſeales to it.

Sr. *Purback Temple* ſworn.

Councel, What do you know of that Gentleman in his carriage of this buſineſſe.

Sr. *Purback Temple*, My Lords, *I* being preſent in Town when that horrid Murder was contrived againſt the late King, there came ſome perſons of honour, Servants to the late King, to my Fathers Houſe, Sir *Edward Partridge*, to engage me to joyn with them to attempt the Kings eſcape. *I*n order whereto they told me, nothing would tend ſo much to his Majeſties ſervice, as, to endeavour to diſcover ſome part of their Counſells, for that it was reſolved by *Cromwell* to have the King tryed at the High Court of Juſtice as they called it, the next day, and defired me (if poſſible) to be there to diſcover their counſells, whereby the King might have notice and thoſe that were to attempt his eſcape. In order whereunto, the next day by giving money to the Officer of the painted chamber *I* got in by day light, in the lobby to the Lords houſe, I eſpyed a hole in the wall under the hanging, where I placed my ſelf till the council came, where they were contriving the manner of try-

trying the King when he should come before them: and after the manner of praying and private consults amongst themselves: When their prayer was over there came news that the King was landing at Sir *Robert Cottens* Stairs, at which *Cromwell* run to a Window, looking on the King as he came up the Garden, he turned as white as the Wall, returning to the board he speaks to *Bradshaw* and Sir *Henry Mildmay*, how they and Sir *William Breerton* had concluded on such a businesse, then turning to the board, said thus. *My Masters, he is come, he is come, and now we are doing that great Work, that the whole Nation will be full of: Therefore I desire you to let us resolve here what answer We shall give the King when he comes before us, for the first Question that he will ask us will be; by what Authority and Commission we do try him? To which none answered presently. Then after a little space* Henry Marten *the Prisoner at the Barr rose up, and said, in the name of the Commons and Parliament assembled, and all the good People of* England, which none contradicted, so all rose up, and then *I* saw every Officer that waited in the room sent out by *Cromwel* to call away my Lord such a one (whose name *I* have forgot) who was in the Court of Wards Chamber, that he should send away the instrument, which came not, and so they adjourned themselves to *Westminster-Hall*, going into the Court of Wards themselves as they went thither. When they came to the Court in *Westminster-Hall*, I heard the King aske them the very same Question that *Cromwell* had said to them.

Mr. *Solicitor*, Gentlemen the Prisoner at the Barr confesses his hand to the Wrarant for Executing the King, you see by his servant how merry he was at the sport. You see by this witness how serious he was at it, and gave the foundation of that advice, upon which they all proceeded, and now he saies he did it not Traitrously, *I* humbly conceive he means it was Justifiable.

Sir *P. Temple*, At another time I was in Town on a *Friday*, and wanting Horses I went to *Smithfield* where I saw the Horses

of

of State of his late Majesty to be sold in the Common Market, at which I called to a Rider, said I, what makes these Horses here? says he I am to sell them, why said I, there's the Kings Brand upon them, C. R. and he shew'd them me, said I, will you sell these Horses? What price? he asked me three or four score pound a piece, said I, who warrants the sale of these horses, says he, Mr. *Marten* and Sir *Will. Brereton*, afterwards I heard the horses were taken into the *Mews* by the Prisoner at the Bar, and Sir *William Brereton*.

Councel. *Was this before the Trial?*

Sir *P. Temple.* It was in 1642, or 1643.

Councel. *That's nothing to this business.*

Marten. My Lord, the Commission went in the name of the Commons assembled in Parliament and the good people of *England*, and what a matter is it for one of the Commissioners to say, let it be acted by the *good people of England?*

Mr. Sol. Gen. You know all *good people* did abhor it, I am sorry to see so little repentance.

Mar. My Lord, I hope that which is urged by the learned Councel will not have that Impression upon the Court and Jury that it seems to have, that I am so obstinate in a thing so apparently ill; My Lord, if it were possible for that blood to be in the body again, and every drop that was shed in the late wars, I could wish with all my heart: but my Lord, I hope it is lawful to offer in my own defence, that which when I did it, I thought I might do: my Lord, there was the House of Commons as I understood it: perhaps your Lordships think it was not a House of Commons, but it was then the Supreme Authority of *England*; It was so reputed both at home and abroad: My Lord, I suppose he that gives obedience to the authority in being *de facto*, whether *de jure* or no, I think he is of a peaceable disposition, and far from a Traytor. My Lord, I think there was a Statute made in *Henry* the seventh his time, whereby it was provided, that whosoever was in Arms for the King *de facto*, He should be indempnified though that King *de facto*, was not so *de jure*; and if the Supreme Officers *de facto* can justifie a war (the most pernicious remedy that was ever adjudged by mankind, be the Cause what it will) I presume the Supreme Authority of *England* may justifie a Judicature, though it be but an Authority *de facto*; My Lord, if it be said that it is but a third Estate, and a small parcel of that, My Lord, It was all that

was extant. I have heard Lawyers say, that if there be Commons appurtenant to a tenement, and that tenement be all burnt down except a small stick, the Commons belong to that one small piece, as it did to the tenement when all standing. My Lord, I shall humbly offer to consideration, whether the King were the King indeed, such a one whose peace, Crowns and Dignities were concerned in publick matters: My Lord, he was not in execution of his offices, he was a prisoner. My Lord, I will not defer you long, neither would I be offensive, I had then and I have now a peaceable inclination, a resolution to submit to the Government that God hath set over me, I think his Majesty that now is, is King upon the best title under Heaven, for he was called in by the Representative body of *England*. I shall during my life long or short, pay obedience to him: Besides, my Lord, I do owe my life to him, if I am acquitted for this. I do confess, I did adhere to the Parliaments Army heartily, my life is at his mercy; if his Grace be pleased to grant it, I have a double obligation to him.

Mr. Sol. Gen. My Lord, this Gentleman the prisoner at the bar, hath entred into a discourse, that I am affraid he must have an answer in Parliament for it. He hath owned the King, but thinks his best title is the acknowledgement of the people and he that hath that, let him be who he will, hath the best title: we have done with our evidence.

Marten. I have one word more, my Lord, I humbly desire that the Jury would take notice, that though I am accused in the name of the King, that if I be acquitted the King is not Cast: it doth not concern the King that the prisoner be Condemned, it concerns him that the prisoner be tryed; it is as much to his Interest, Crown, and Dignity, that the Innocent be acquitted, as that the nocent be condemned.

Mr. Sol. Gen. My Lord, this puts us now upon the reputation of our evidence, and you may see how necessary it is to distinguish between Confidence and Innocence, for this very person that desires you to have a care how you condemn the innocent, he doth seem to intimate to you, that he is an innocent person at the bar; and yet confesses he did sit upon the King, did sentence him to death, that he signed the Warrant for the execution, and yet here stands that person that desires you to have a care of condemning innocence: what is this at the bottome of it, but that my fact is such as I dare not call it in-

innocence, but would have you to believe it such. Gentlemen of the jury, was it your intention the King should be so tryed as this prisoner moved? it will concern you to declare that the people of *England* do abhor his facts and principles; every fact the prisoner hath confessed himself, the sitting in that Court which was treason; his sentencing was treason, signing the Warrant for Execution was the highest of treasons: Gentlemen, all that he hath to say for himself is, there was an authority of his own making, whereby he becomes innocent, But we hope out of his own mouth you will find him guilty.

Gilbert Millington. I desire you to hear me; I come not hither to dispute, but to acknowledge, I will not trouble you with long discourses: My Lord, it is not fit for wise men to hear them, I am not able to express them; I will not justifie my self, I will acknowledge my self guilty. My Lord, the reason why I said the last day Not guilty, was, in respect of being upon the Scaffold, and murthering the King, and those things; but I will wave all things if your Lordship will give me leave, and I will go unto the lowest strain that possible can be, I will confess my self guilty every way, I was awed by the present power then in being. This I leave with you, and lay my self at your feet, and have no more at all to say, but a few words in a petition, which I desire you will please to accept, and so I conclude.

Councel. *We do accept this honest and humble Confession,—and shall give no evidence against him to aggravate the matter.*

L. Ch. B. Your Petition is accepted, and shall be read.

Robert Titchburne. My Lord, When I first pleaded to the Indictment, it was, *not guilty in manner and form as I stood Indicted:* My Lord, it was not then in my heart, either to deny or justifie any title of the matter of Fact; my Lord, the matter that I was led into by ignorance, my Conscience leads me to acknowledge: But my Lord, if I should have said Guilty in manner and form as I stood indicted, I was fearful I should have charged my own Conscience, as then knowingly and maliciously to act it. My Lord, it was my unhappiness to be called to *so sad a work*, when I had so few years over my head: A person neither bred up in the Laws, nor in Parliaments where Laws are made; I can say with a clear Conscience, I had no

more *Enmity* in my heart to his Majesty, then I had to my wife that lay in my bosom. My Lord, I shall deny nothing, after I was summoned, I think truly I was at most of the Meetings, and I do not say this that I did not intend to say it before, but preserving that *Salvo* to my own Conscience, that I did not maliciously and knowingly do it; I think I am bound in Conscience to own it; as I do not deny but I was there, so truly I do believe I did sign the Instrument: And had I known that then which I do now (I do not mean my Lord, my afflictions and sufferings, it is not my sufferings make me acknowledge) I would have chosen a red hot Oven to have gone into as soon as that meeting; I bless God, I do this neither out of fear, nor hopes of favour, though the penalty that may attend this acknowledgement may be grievous: My Lord, I do acknowledge the matter of Fact, and do solemnly profess, I was led into it for want of years, I do not justifie either the act or the person, I was so unhappy then as to be ignorant, and I hope shall not now (since I have more light) Justifie that which I was ignorant of. I am sure my heart was without malice; if I had been onely asked in matter of Fact at first, I should have said the same, I have seen a little; The Great God before whom we all stand, hath shewn his tender mercy to persons upon repentance, *Paul* tells us though a Blasphemer, and Prosecuter of Christ, it being done ignorantly upon repentance he found mercy: My Lord, Mercy I have found, & I do not doubt, but mercy I shall find, My Lord, I came in upon the Proclamation, and now I am here, I have in truth given your Lordship a clear and full accompt. Whatever the Law shall pronounce, because I was ignorant, yet I hope there will be room found, for that mercy and grace, that I think was intended by the Proclamation, and I hope by the Parliament of *England*; I shall say no more, but in pleading of that, humbly begg that your Lordships will be Instrumental to the King and Parliament on my behalf.

Council. *We shall give no evidence against the Prisoner, he says he did it ignorantly, and I hope and do believe he is penitent, and as far as the Parliament thinks fit to shew mercy, I shall be very glad.*

Owen Roe. I have not much to say, I never had any ability, therefore my Lord, it was never my intent upon my plea, as was said before, to deny any thing I have done; for I was clearly convinced, that I ought to confess it before, and I do confess against my self that

that I did ſit there ſeveral times, and to the beſt of my remembrance, I did ſign and ſeal the Warrant for his execution, and truly my Lord, it was never in my heart to contrive a plot of this Nature. How I came there I do not know, I was very unfit for ſuch a buſineſſe, and I confeſſe I did it ignorantly, not underſtanding the Law, ſo was carried away hidden in the buſineſſe, not underſtanding what I did; therefore my Lord, I humbly intreat this honorable Court, that you will conſider of it, and look upon me as one that out of ignorance did it, and if I had known of my act, I would rather have been torn in peices with a thouſand horſes. When I heard of the Declaration and gracious pardon of his Majeſty, I confeſs I went to my Lord Maiors and layed hold of it, and I thought my life as ſecure as it is now in my own hands: But I do wholly caſt my ſelf upon the Kings mercy, and as I have heard he is a gracious King full of lenity and mercy, ſo I hope I ſhall find it. I was never againſt Government, it is a bleſſed thing that we have it, I hope all the Nations will be happy under it. I ſhall ſubmit to his Majeſty and Government, I can ſay no more, I was not brought up a Schollar, but was a Tradeſman, and was meerly ignorant when I went on in that buſineſs; I do humbly intreat your Lordſhips, that you would as tenderly as may be, preſent my caſe to the King, whom I reſt upon, and leave all to your Lordſhips wiſdome and Diſcretion to do what you will concerning me.----

Councel. *We accept his Confeſſion and do hope he is penitent before God, as well as before the World.*

Robert Lilburn. Be pleaſed to give me leave to ſpeak a few Words, I ſhall be ingenious before your Lordſhips. I ſhall not wilfully nor obſtinately deny the matter of fact, But my Lord I muſt and I can with a very good conſcience ſay; that what I did, I did it very innocently without any intention of murther, nor was I ever plotter or Contriver in that murther, I never read in the law, nor underſtood the caſe throughly; What ever I have done, I have done ignorantly.

Lord Cheif Baron. *Becauſe you ſhall not be miſtaken in your words, God forbid that we ſhould carp at your words, the word Innocent hath a double acceptation, Innocent in reſpect of Malice, and Innocent in reſpect of the fact.*

Lilburn. The truth is, my Lord, I was for the withdrawing of the Court when the King made the motion to have it withdrawn, and upon

upon the day (my Lord) that the King was put to death, I was so sensible of it, that I went to my Chamber and mourn'd, and would if it had been in my power, have preserved his life: My Lord, I was not at all any Disturber of the Government. I never interrupted the Parliament at all. I had no hand in those things, neither in 1648. nor at any other time. I shall humbly beg the favour of the King, that he would be pleased to grant me his pardon, according to his Declaration which I laid hold on, and rendered my self according to the Proclamation.

Councel. *We shall say nothing against him.*

Henry Smith. My Lord, I shall not desire to spend your Lordships time, what I have done, I did it ignorantly, not knowing what I did. I shall not deny the matter of fact, but as to that I pleaded Not guilty before, it was in relation to that which I was ignorant of, the law of the Nation; I have not been bred to it, I humbly desire your Lordships to consider, that what I did was done ignorantly not knowing the law.

Councel. *What was that? Smith.* I do confesse that I sate in the Court, I do not remember, that I signed or sealed: (both the Warrants being shewed him) adds, My Lord I confess the hands are like mine, but whether they be so or no I know not.

Coun. *Then we will prove it. Is the Seal yours? Smith.* I do not know.

Councel. *Do you confess you were in the Painted Chamber the 29. of January? Do you remember any thing of that?*

Smith. I do not certainly know that.

Councel. *My Lord, he hath said enough, shall the Jury doubt of that which he believes? Smith.* I do not remember that I did write it.

Councel. *My Lord, We presse it no farther, he hath confessed enough.*

Smith. My Lord, what I have done I beseech you consider, I did it in ignorance, not knowing the law, there were those about me, that were able to call me, who were then in Authority, whom I dared not disobey, if so, I had been in danger also.

Councel. *My Lords we have done, be pleased to direct the Jury upon these several evidences and confessions.*

Smith. I beg one word, I must declare this, I can speak it seriously, that from the first to the last of these unhappy Wars, I have been a man of trouble and sorrow, I have been (as many wiser men have been) run upon error. My Lord, I know not what I have done, I pray that this Court will be pleased to be a Mediator for me, that I may have his Majesties favour, and that this Petition may be received

on

my behalf. (He then delivered his Petition to the Court) I can joyce for that happy settlement that is again in the Nations, and declare chearfully my humble submission to that Government, and pray the Lord will blesse and prosper his Majesty and the Parliament of these Nations. My Lord, I rendered my self according to the Proclamation, I shall say no more.

Lord Chief Baron. Gentlemen you of the Jury. These prisoners that stand before you at the Bar, that is, Mr. *Harvey*, *Pennington*, *Marten*, *Millington*, *Ticchborne*, *Roe*, *Lilburn*, and Mr. *Smith*, there are eight, these are persons who by the *Act of Indemnity* are to be tryed for their lives for the treasons they have committed, but no execution is to be untill the Parliament have further considered the matter that is before us, and you are to find the matter of fact; what mercy they shall find hereafter, that is to be left (as I told you) to the consideration of the Parliament. We are to proceed according to law and Justice. They are all indicted for compassing and imagining the death of our late Soveraign Lord *Charles* the first, of most glorious memory; and for that that hath been opened to you, there are so many Overt Acts, which are as so many evidences to prove that Indictment, which is the compassing and imagination of their hearts to put the King to Death. If any one of these be proved, that alone is enough to prove the Indictment, which is the compassing and imagining of the heart, that is the Treason, the other are but evidences. If any thing burst forth from the mouth, or from the hand, as here it is, these are evidences of the imagination of the heart: for this you have heard by the confession of all of them, that they did enough to find the indictment, they have all of them confessed their sitting upon the King in that traiterous Assembly, which they called the High Court of justice. There is one of the Overt Acts expresly laid down in the indictment, they took upon them an Authority to consider how to put the K. to death, and that they did put the K. to death, but they were mistaken as some of them said, that the actual murthering of the K. was not their meaning. But if they did that which tended towards it, they are all guilty of treason, it is all one to you, if they be guilty of any of these: either sitting, sentencing, or signing, they are guilty, and all of these except two, are guilty of all these, the matter is clear and pregnant, there is something hath been said by many of them with a great deal of expression of sorrow, they did confesse (all but one) the fact, and that which tended to their defence was

ignorance

ignorance, but that doth not at all concern you. It will be taken in its due time into consideration; The several deportments of them all, that is for another Judicature. Your business is to find the matter of fact, onely this let me repeat unto you, there is Mr. *Harvey* who hath pleaded several matters which are not proper for you, expressing his sorrow and penitence, We shall not trouble you with that, because they are for the consideration of another Court, We ought all to have a tender compassion, ought to be sorry with and for them that are sorrowful. The like of Alderman *Pennington*. *Marten* hath done that which looks forward more then backward, I could wish with all my heart, he had looked more backward; that is, to repentance of that which is past, then obedience to that which is to come; it is a trouble to repeat those things which he said himself, and truly I hope in Charity, he meant better then his words were. *Millington* he hath done the like with the rest, confessed the fact, put himself upon mercy wholly, and said he was over-awed by the present power. This I repeat not as any thing to you, who are to consider only matter of fact. For Alderman *Titthborn* he hath spoken very fully, and truly very conscienciously —— upon the whole matter, acknowledges his ignorance, his sorrow, his conviction in point of Conscience, and I beseech God Almighty, to incline his heart more and more to repentance. They that crucified Christ (to use his own words) through ignorance, found mercy. Colonel *Ros*, he confesses the same wholly and casts himself upon the Kings mercy, and he thought it a blessed thing that the King was restored again, and submitted wholly to mercy; and so did Mr. *Lilburn*, he said he went to his Chamber and mourned the day the King was beheaded, I am very glad he had so early a sense of it. *William Smith* he did it ignorantly, he was not guilty thus far, that was, he was led on, even like one silly sheep that follows another, by what relation I have heard of the person, at that time he was not thought fit to be of the Privy Council. There is nothing more to say to you, the fact is confessed by them all. It is so clear you need not go from the Bar.

After a little Consultation between the Jurors, they returned to their places.

Clerk of the Crown. Are you agreed of your Verdict?

Jurors. *Yes.*

Clerk. Who shall say for you?

Jurors.

Jury. *Our Foreman.*

Clerk. Edmond Harvey *hold up thy hand. How say you, is the prisoner guilty of the Treason whereof he stands Indicted and hath been arraigned, or not Guilty?*

Jury. *Guilty*——

Clerk. *Look to him Keeper.*

Clerk. *What Goods and Chattels, &c.*

Jury. *None to our Knowledge. The same question being asked touching Alderman* Penington, Henry Marten, Gilbert Millington, *Alderman* Fitchborne, *Col.* Roe, *Col.* Lilburne, *and* Henry Smith, *they were severally found guilty by the Jury in manner aforesaid: All which prisoners finding the place where they stood to be cold and unwholsome, prayed the Court they might have leave to be returned to the Prison till the Court shall be pleased to command their further attendance, which was granted.*

The rest of the prisoners aforenamed, together with *W. Heveningham* brought to the Bar.

Clerk. *You the Prisoners at the Bar, those Persons last called of the Jury are to passe, &c. If you or any of you, will Challenge all or any of them, you must Challenge them when they come to the Book before they be sworn.*

Clerk. Charles Pilfield, Christopher Abdy, George Terry, Daniel Cole, Anthony Hall, Richard Abel, Edmond Starnell, Edm. Fit, William Whitcombe, Francis Dorrington, Thomas Nicoll, Robert Sheppard, *in all 12 admitted and sworn of the Jury.*

Clerk. *If any man can inform, &c.*

Clerk. John Downes *hold up thy hand, &c. and the like were said to all the other persons following, viz.* Vincent Potter, Augustine Garland, Symon Meyne, James Temple, Peter Temple, Thomas Waite, *and* William Heveningham, *Look upon the Prisoners at the Bar you that are sworn, you shall understand that* John Downes *the Prisoner at the Bar stands indicted, &c.*

Kings Councel. *May it please your Lordships, and you Gentlemen of the Jury; The Prisoners at the Bar stand indicted of High Treason, for compassing and imagining the death of the late King* Charles *the first, of blessed memory; The Evidence by which we shall make out against them this treason of their heart in Compassing and Imagining the King's death, (for that is the substance of the Indictment, and all that follows is but Evidence) will be by proving that they did sit as Judges in that pretended Court of Justice, when the King stood a Prisoner at the Bar, That they did*

 sentence

sentence him to death every one of them, and we shall prove against all but one of them, that they did sign that bloody warrant for murthering of the King, and against one of them that stands at the Bar, we shall prove (to his shame and Confusion of face) that he did spit in the face of our late Soveraign Lord.

John Downes. My Lord, I have humbly pleaded not guilty, not with any intention to justifie the fact, or to extenuate it; but my Lord in regard there is that charged in the Indictment, that my Conscience saith I am not guilty of, I durst not plead guilty; otherwise, my Lord, I should not have troubled you with not guilty, but should have humbly taken the shame and confusion for it; it is my intention to put the Court to as little trouble as possible I can, therefore I do most humbly intreat of your Lordships and the Court, that you will permit me to acknowledge that which will be a sufficient evidence of my Conviction, if the Court so please, and that you will be pleased to hear me on my behalf; if I can humbly offer to you some special thing which is not in the Case of another (I could wish it had, if it had, we had none been here) I do humbly acknowledge, that to sit upon that occasion in that place, is evidence enough to convince what is in the heart; except by some signal actions that might happen from some that might shew how it was his unhappiness to be put into such a business, yet had neither malice nor treason in his heart; I do humbly conceive, that there is that goodness in you, that this plea, this allegation will be most welcome to you. My Lord, though there was such a thing, such an unparalleld thing, I was thrust into this number, but never was in Consultation about the thing; God is witness, I was not put in till the Act was ready to passe in a second Commitment, by one of the same number; I denyed it, yet they said I must make one, I must take my share, so I came in. Never did I know of his Majesties being brought to *London*, till he came. My Lords, in this great unhappiness, I think it is some mitigation, and I judge it a happiness that so wise prudent persons as this Court consists of, that you are my Judges that can look back, my Lord, and consider what the times were then, and can, My Lord, account it a happiness, that there is a special wisdome in you, that in nice Cases you will be able to make a distinction. I do indeed, my Lords, sadly and seriously confess that I was divers times with those persons that were called Judges of the late K. at several of their meetings and sittings, it

is

a long ago, I cannot say how often, I was several times there. My Lord, I do humbly beg of your Lordships (I will trouble you as short as I can) that you would be pleased so far to favour me, as to give me leave to give you a short account of the business; The last day his Majesty came to that which was called then a Court, several times he was brought (I think thrice) and his charge was given in words high enough, he said he could not acknowledge their jurisdiction, that was the answer, my Lord, till the last day, then I confesse I was there. He that was called President, did again and again tell him the heads of his charge, told him he had several dayes given for consideration, that this was the last day that the Court (as they call'd themselves) would give him his final answer; if he stood still to day and move to the jurisdiction of the Court, they must take all *pro Confesso*, and would give sentence: My Lord, to this his Majesty indeed with a great deal of composedness and wisdom told them to this effect, I cannot own your jurisdiction, you have power enough indeed, I wish you may use it well, but because you are so ready to give a sentence which may be sooner given then avoided, I think fit to let you know, that I have something that I desire to speak to my Parliament, for I have something to offer unto them that will be satisfactory to you all, and will be for the immediate settlement of the Kingdome in peace——My Lord, he that was called President, answered that no notice could be taken of any thing, but onely whether he would answer to his Charge: upon that, my Lord, his Majesty indeed (with the greatest earnestness that ever I beheld, and yet in no unseemly passion) told them they might soon repent of such a sentence; that he did Conjure them to withdraw once again and to consider of it, if it were but half an hour, or (said he, if that be too much for you) I will withdraw. My Lord, here I can make my appeal to him that must judge me when you have done with me, I had not a murderous nor a trayterous thought against him, but Sir I confess such deep passions did fall upon me, that truly my self I was not. I remember the persons between whom I sate, as it fell out, was one Mr. *Cawly*, and Col. *Wanton*, these two I sate betwixt, these were the very words I spake to them, *have me hearts of stone, are we men?* they laboured to appease me, they told me I would ruine both my self and them; said I, if I die for it, I must do it: *Cromwell* sate just the seat below me, the hearing of me make some stir whispering

he looked up to me, and asked me if I were my self, what I meant to do, that I could not be quiet. Sir, said I, no, I can not be quiet, upon that I started up in the very nick, when the president commanded the Clerk to read the Sentence, I stepping up, and as loud as I could speak, My Lord, I spake to this effect, these words or to like purpose, My Lord, said I, I am not satisfied to give my consent to this sentence, but have reasons to offer to you against it, and I desire the Court may adjourn to hear me, presently he stept up and looked at me; Nay, saith he, if any of the Court be unsatisfied, the Court must adjourn: Sir, accordingly they did adjourn into the inner Court of Wards; When they came there, I was called upon by *Cromwell* to give an account why I had put this trouble and disturbance upon the Court, I did speak Sir to this effect, (it is long ago the very words, I think I cannot speak) but to this effect I did speak: My Lord, I should have been exceeding glad if the Court had been pleased to condiscend to this gracious expression, but it is not too late for me, I desire not his death but his life, and that the Nations may be settled in peace, the King now is pleased to offer, that if he might but speake with his Parliament, he would offer to them such things as should be satisfactory to us all, so (said I) what would you have? Your pretence of bringing him to these proceedings was, that after such a long and bloody War, his Majesty would not condiscend to such concessions as might secure the Parliaments party, but now you hear him, that he will give every one of us satisfaction: I told them, sadly told them, (I think I may truly say, more sadly then, than at this time) that if they should go precipitantly on, and give Judgement upon him before they had acquainted the Parliament with what the King was pleased to offer, we should never be able to answer it, the rather my Lord, (and that I did presse with all the little understanding that I had) if they did but consider the last concluded order that the Parliament made after the passing of the Act for Tryal (that which was so called) I say there was this order that shut up all, That upon any emergency that could not at that time be thought on in the House, the Court should immediately acquaint the House with it. My Lord, I did inser as strongly as I could to them, That if this were not emergent, I could not tell what was. The King denyed the jurisdiction of the Court, and yet with all vehemency desired to speak with his Parliament, were not these emergencies?

ancies? if not, I knew not what were emergencies. My Lords, besides this, there was another thing I did presse, that I thought was of greater consequence then this, as to the satisfaction of every mans particular conscience, that admitting (if it might be admitted though not fit to be admitted) that the King was lyable to his Subjects, that they might call him to an account, and might condemn him, (I beg your pardon that I take the boldnesse to make such admissions) but if such a thing might be admitted, Certainly, it did exceedingly become those Judges that were to give such a sentence (not against a Common person, but against the greatest) to be very well satisfied in matter of fact, to a full evidence before them, that such and such things that were said were true. I do acknowledge this that to the best of my apprehension (I wish it had been so to others) there was a great shortnesse in this, I do humbly affirm this, that not one Member of the Court did hear one witnesse *Viva Voce*; I did presse, that if the Court did give judgement against the King, without a fair examination, I said it was such a thing, as no Judge at any Assizes would do against a Common person, what I had was from *Peters*, and from some private Whispers from one of them that is gone, and hath received his sentence and doom. *Cromwell* did answer with a great deal of storm, he told the president that now he saw what great reason the Gentleman had to put such a trouble and disturbance upon them; saith he, sure he doth not know that he hath to do with the hardest hearted man that lives upon the earth, however it is not fit that the Court should be hindered from their duty by one peevish man, he said the bottome was known; that I would fain save his old Master, and desired the Court without any more adoe, would go and do their duty. Another that spoke to me in answer was one that hath been before you, and hath received his Sentence but is not dead, (and I desire I may not name his name) his answer was to what I have said, that some men were either Skepticks or Infidels. After this I did go into the Speakers Chamber, and there I did ease my mind and heart with tears, God onely knows. I have an unhappy memory, I have slipt many things.

Lord Cheif Baron. *Remember your self by Papers if you have any, no man will hinder you.*

Downes. I have no papers, but my Lord for the truth of this, I have said, there are some witnesses that will make the substance the effect of this appear.

Lord

Lord Chief Baron. Mr. *Downes, there is one particular before you come to the witnesses, that after all these Convictions you signed the Warrant, if you deny it, the Council will prove it.*

Downes. I did never hope or think that any thing I can say should be so satisfactory to you, but things might be retorted upon me, and perhaps what I thought might be for extenuating my Crime, may fall out to my disadvantage: I understand you do proceed upon three particulars, either signing the first Warrant for constituting the Court. To my remembrance I know not of it, if my hand was to it I have forgot.

Councel. *Your hand is not to that, but we mean your hand is to the Warrant for execution* ——— *pray shew it him, (It was shewn him.)*

Downes. My Lord, how to reconcile that which hath been said before with this that comes after, I leave it to you, I am totally at a losse. When those times were, how impetuous the Soldiers, how not a man that durst either disown them or speak against them, I was threatned with my very life, by the threats of one that hath received his reward, I was induced to it. Certainly my Lord it doth argue that there was not malice predominant; Love and Hatred cannot be at the same time in one person. Design my Lord, what should be my design, a poor ordinary mean man. Surely my Lord, I could not design any great matters or places. I knew my self unfit, I humbly beg you would give me leave to tell you a little what I got. ———

Mr. Soll. Gen. *By your favour my Lord, the Prisoners at the Bar may say what they will by way of extenuation, but we expect that when they enter upon these Discourses they will save your Lordships time and ours, by a publick confession and evidence of sorrow. We cannot spend so long time to hear these long Discourses, we will rather prove it against every man singly.*

Downes. I will trouble you no farther, I do acknowledge all, I humbly submit and beg your favour, and leave my self upon my Countrymen the Jury, and beg the Kings mercy especially. ——— Pray spare me one word, that you would hear but a Witnesse or two unto that businesse.

Councel. *He doth confesse he sate and signed, we beleive he is sorrowful and against his Conscience he did sign, and that he did it out of a fear and from a threat, that he was over-awed (so was the Hangman too) but after he had apprehended this sorrow, and declared his Judgement upon the fact, He signed the warrant.*

Downes.

Downes. My Lord I do humbly beg his Majesties mercy, I came in upon the proclamation.

Vincent Potter. My Lord, my condition requires ease for my body, (he had a fit of the Stone upon him at the same time) I pray that the giving the Sentence for execution may be suspended.

Lord Chief Baron. *The Execution must be suspended, for you are without Qualification.*

Potter. I desire only this, I am not in a condition to declare what I know and would speak, I am mighty full of pain, if I am under that Qualification, let me rest under that.

Councel. *Do you confesse the Indictment, or will you put us to prove it?*

Potter. I am one that came in.

Lord Chief Baron. *It is thus with you, whether or no did you sit, sign, or act in this High Court of Justice against the King?*

Potter. I will deny nothing, I confesse the fact, but did not contrive it. I am full of pain.

Lord Chief Baron. *According to the demerit of the Case in Law, you must receive Judgement here, but no execution of that Judgement shall be until the King by advice and consent of Lords and Commons shall order the execution of it, you are to be tryed now. Do you confesse you signed the Warrant for execution of the King?*

Potter. I do confesse it, my Lord.

Councel. *We do accept it.*

Potter. I beseech you let me go to ease my self.

Lord Chief Baron. *Officer, set a Chair for him.* (*which was done*) *Mr.* Potter *sit down.*

Aug. Garland. May it please your Lordship, I came here this day intending to have waved my plea, & referred my self to this honourable Court, to be recommended to the Kings mercy and the parliament: But hearing of some scandal upon me more then ever I did hear till within these few days, I shall desire your favour in hearing of my Trial.

Mr. Soll. Gen. *My Lord he saith well, for if he had confessed the Indictment, we should not have accepted it.* [*Call the Witnesses.*]

Garland. I do confess this, I sate, and at the day of Sentence signed the Warrant for Execution.

Mr. Sol. Gen. *And we will prove that he spit in the Kings face.*

Garland.

Gar. I pray let me hear that, Otherwise I would not have put you to any trouble at all.

———*Clench* sworn.

Councel. *Do you know the prisoner at the Bar*, Augustine Garland?

Clench. I know him very well.

Councel. *Tell my Lords and the Jury how you saw him behave himself, to our Soveraign Lord the King when he was at the Bar.*

Clench. I was that day at *Westminster-hall* when the King had sentence, they hurried the King down, this Mr. *Garland* came down stairs by them, towards the bottome of the stairs he spit in his face at a little distance.

Councel. *Do you believe he did it on purpose, upon your oath?*

Clench. I suppose he did it somewhat suspitiously in that way; I did see the King put his hand in his left pocket, but I do not know whether the King wiped it off.

Mr. Sol. Gen. *The King wiped it off, but he will never wipe it off so long as he lives: He hath confessed that he sate, that he sentenced, and that he signed: We say he contrived it at the beginning, and at last bid defiance to the King, I shall desire he may be remembred in another place.*

Garland. I do not know that, I was near him at that time, I do not remember this passage, I am afraid he is an Indigent person, if I was guilty of this inhumanity, I desire no favour from God Almighty.

L. Ch. B. *I will tell you this doth not at all concerne the Jury, but the Circumstance possibly may be considered in another place.*

Gar. I refer my self whether you be satisfied that I did such an Inhumane act, I submit that to you; I dare appeal to all these Gentlemen here (looking upon the prisoners) or any other whether they ever heard of it, nor I was never accused for such a thing till a few dayes since; but I wave my plea, and refer my self to the Court: Now, my Lord, this is the truth of my Case, there is that honorable Gentleman the Speaker of the House of Commons knows, I lived in *Essex* in the beginning of these troubles, and I was inforced to forsake my habitation, I came from thence to *London*, where I have behaved my self fairly in my way. Afterwards in 1648 I was chosen a member into the Parliament, in *June* 1643. I came in a member of the Parliament. My Lord, after the division of the House, by the in-

insolency of the Soldiery. Some came to me, and desired me, that I would go to the House, I was then at my Chamber at *Lincolns-Inne*, I forbore a Week and more; said I, I do not expect to be admitted, for they look upon me as another person; said they, if you will go, you shall have no contradiction; I went, and went in; when I was in, the first businesse that came was the businesse of Tryal of the King, and it was put upon me to be Chair-man, for bringing in this Act for Tryal; I did not know how to contradict that power or authority (be it what it will) but I must obey (I fear my ruine will follow it:) in that respect my Lord, when I came there, I was forced to run throughout what they had imposed upon me. ——— Having seen me, I could not shrink from them for fear of my own destruction, and thereupon I did go in, & did that which I have confessed to your Lordships, not out of any malignity to his Majesty. I had never any disrespect to him in my life; My Lord I did not know which way to be safe in any thing, without Dores was misery, within Dores was mischief, I do appeal to all that had any thing to do with me, that I never did any wrong to any that was of the Kings party, but helped them as I was able. My Lord, when the Government was thus tossed, and turned, and tumbled, and I know not what, and the secluded Members came into the House, I knew not what to do in that case neither. Assoon as this parliament had declared the Treaty, which was the eighth of *May*, the ninth of *May* I appeared before the right honourable the Lord Mayor of *London*, and did claim the benefit of his Majesties gracious Declaration, and to become a Loyal Subject, as in my heart I alwayes was; and my Lord Mayor being there, I hope he will testifie, that assoon as I heard of the proclamation, I rendered my self according to the the proclamation; My Lord, this hath been the carriage of me, being alwayes under fear and force, I refer my self to your Lordships.

Symon Meyne. When I was laſt here my Lord, that I did then ſpeak *Not guilty*, was not as to the matter of fact, but my Conſcience telling of me, that I had no malice or ill intention to his Majeſty, that was the reaſon. For matter of fact I ſhall acknowledge what I have done, and lye at his Majeſties feet for mercy. I am an ignorant weak man in the Law, I will confeſs the fact.

Councel. *Did you ſigne the Warrant for ſummoning this Court, and did you ſigne the Warrant for Execution of the King?*

Meyne. I did ſit in Court?

Councel. *Did you ſign the Warrant for Execution?*

Meyne. My Lord, I knew not of the Kings bringing up, I never was at any Committee.

Councel. *We do not ask you that. Look upon the warrant and ſee if your hand and ſeal be not to it?*

Meyne. My Lord, it is my hand.

Councel. *Then my Lord we have done.*

Meyne. My Lord, I acknowledge it is my hand. By what importunity it may be known to ſome here. I was very unwilling to it, I was told, what fear was there, when forty was there before, and twenty was of the *Quorum?* I was thereupon drawn in to ſet my hand to it. My Lord I never plotted nor contrived the buſineſſe. There was a Gentleman that told me, if I did offer to ſpeak in the Houſe (pluckt me down by the Coat, and he told me I ſhould be ſequeſtred as a Delinquent (the name of this perſon I ſhall omit) ſaith he, you will rather loſe your eſtate, then take away the Kings life. I leave it with you.

James Temple. At the laſt time I pleaded to the Indictment *Not guilty*, but I ſhall now deſire to ſee my hand, and if it be my hand I muſt confeſs all, the circumſtances muſt follow; (The Warrants being ſhewn him) I do acknowledge it is my hand to both, I never did conſult concerning

erning the Court.

Councel. *There are some worse then he, but he is bad enough.*

James Temple. I refer my self to the King and parliament and presented a petition which was received by the Court.

Peter Temple. When I was here the last time, I pleaded *Not guilty*——the reason was because there are divers things in the indictment, that my Conscience tells me I am not guilty of, for I had not a malicious or trayterous heart against the King. To save your Lordships time, I will confesse what I am guilty of. I was in the Court, sate there, if I see my hand I shall confesse it.

Councel. *Were you there when Sentence was given?*

Temple. Yes Sir.

Councel. *Shew him the warrants (which being shewed him) I acknowledge they are my hand, and refer it to your Lordships.*

Councel. *Mr.* Wayte *you heard the Charge read against you, what say you to it?*

Thomas Wayte. Truly my Lord, when I was here last, I pleaded not guilty, I humbly desired then your Lordships to hear me a word or two. You promised me then I should be heard, I shall desire to speak for my self.

Lord Cheif Baron. *God forbid but you should.*

Mr. Soll. G. *By your Lordships favour we must speak first, if he will confesse the fact, he may speak what he will. Did you sit in the Court?*

Wayte. Yes.

Councel. *The day of Sentence?*

Wayte. Yes.

Councel. *Is your Hand to the Warrant for Execution?*

Wayte. I know not, pray let me see it. (it was shewn him) My Lord I confesse it is like my hand, but I do not remember it.

Councel. *If you do not acknowledge it, It will be proved.*

Wayte. Truly my Lord, I do beleive it is my hand.

Councel. *Then the Jury will not doubt it,*

Wayte. But I desire to be heard. I am loath to trouble you much, I will tell you how I was brought into this businesse. My Lord I was a Member of that House, that erected this Court, when the Treaty was in the Isle of *Wight*. immediately after the Army came up, I was utterly against that Act in the House. When the Army came up to purge the House, I was much troubled at it, I desired to know the Charge they had against them. Two or three dayes after I did move, and there were other Gentlemen, that did move to know what Charge there was. They sent word we should have a Charge in due time, we sent and none came but said we should have it in due time: I went to those worthy Gentlemen, to see them in prison, and see nothing would be done; I took my leave and made account to see them no more, and went down into the Country to *Leicester-shire*: I was sent for up several times. I would not come with threats upon pain of Sequestration: My Lords, there were Petitions going up and down in the Country for bringing the King to that businesse, which was against my conscience. I went to *Rutlandshire*, I heard there were some things working there, I used my interest, and I thank God I stopt it. I came then to *London*, when all these things were destroyed. I came to *London*: the day before the Sentence was given, I went to the House (thought nothing) some were sent to the *Tower*, and I was sent for to the House and my name was in the Act unknown to me, but one sent a Note in my

my Lord *Grayes* Name, that he would speak with me; I went to him, and I said, my Lord what would you do with me? saith he, I did not send for you. Thereupon *Cromwell* and *Ireton* laid hold on me, said they, we sent for you, you are one of the High Court, No said I, not I, my judgement is against it, they carried me to the Court. When the King desired to speak with his Parliament, I rising up, one told me I must not be heard, for the President was to give Judgement, and said there was an order that none should speak in Court. Mr. *Downes* did move and they did adjourn the Court, and I was glad I got out; *Cromwell* laughed, and smiled, and jeared in the Court of Wards. I hope your Lordship will be pleased to consider I was no Contriver, no Soldier that put the force upon the House, that erected the Court; None of the Law makers, or did any thing maliciously against the King. My Lord, I was looked upon with an evil eye, for regarding the Kings friends in the Countrey: *Gray* he told me the King would not die, I hope he will not, said I; the next day on *Monday*. I went to the House, they were labouring to get hands for his Execution at the Dore. I refused and went into the House; saith *Cromwell*, those that are gone in shall set their hands, I will have their hands now. That night I went to the Lord *Grays*, and he said I am afraid they will put him to death. I said so also. My Lord I have been a great sufferer, I was drawn in, trapan'd into it, since being a friend to the Kings friends, I am almost ruined in my estate; I beseech your Lordships make the best interpretation. I hope you will beleive I was no Contriver, I humbly lay hold upon the Kings mercy and favour. I came in upon the proclamation, I pray that this Honourable Court, will prefer my petition to the King and both Houses of Parliament, which the Court then re-

William Heveningham.

William Heveningham. My Lord, in 1648. we were under a force, under the tyranny of an Army, they were our Masters; for a malicious and a traiterous heart I had not. I do absolutely deny the signing the warrant for summoning the Court; and also that warrant for execution of the King; at the time of the sealing, I had that Courage and boldness that I protested against it.

Councel. *We do not question him for that, but for sitting in the high Court of Justice, and that upon the day of the sentence, do you deny that?*

Heveningham. My Lord, I cannot say positively.

Councel. *If you deny the matter of fact, it must be proved.*

Heveningham. I cannot say positively, but it may be I might.

Councel. *Either say positively you did, or else let the witnesses be call'd.*

Heveningham, Truely, my Lord, I think I did, but my after-actions——

Lord Chief Baron. *Mr.* Heveningham, *that shall be considered.*

Councel. *My Lord, to sit upon the day of sentence was high treason in it self, and is an evidence of Compassing and Imagining the Kings death.*

Hev. I shall lay hold of the Declaration, I came in upon the proclamation, I pray your Lordships to intercede for me to the King, and both Houses of Parliament, I pray the mercy of this Court.

L. Ch. B. *You of the Jury, they have all confessed, and therefore you may go together.*

Simon Meyne. My Lords, I have forgot my Petition, it is at my lodging, I desire I may send it at night.

John Downes and *Peter Temple* prayed the like favour.

L. Ch. B.

L. Ch. B. *Do, ſend them, they ſhall be received.*

The Jury having conſulted together a certain time, they went to their places.

Clerk. *Gentlemen, are you agreed of your verdict?*

Jury. *Yes.*

Clerk. *VVho ſhall ſay for you?*

Jury. *Our Foreman.*

Clerk. John Downes *hold up thy hand* —— *Look upon the priſoner, how ſay you, is he guilty of the High Treaſon whereof he ſtands indicted, and hath been arraigned, or not guilty?*

Forem. *Guilty.*

Clerk. *Look to him Keeper, VVhat Goods and Chattels, &c.*

Forem. *None to our knowledge. And the like verdicts at the ſame time paſſed in the ſame manner againſt* Vincent Potter, Auguſtine Garland, Symon Meyne, James Temple, Peter Temple, Thomas Waite, *and* William Heveningham.

Potter. I hope I may be freed from Irons, I am in pain, and a man of bulk.

L. Ch. B. *VVe can give no order in it, we muſt leave it to the Sheriff.*

Potter. I begg it of you, my Lord.

L. Ch. B. *VVe muſt leave it to the Sheriff.*

Mr. Heveningham. You muſt withdraw from the Bar.

Clerk.

Clerk. *Officer, bring down* Waller, Fleetwood, Hacker, Axtel, Hulet, Revington, Marten, Millington, Titchborne, Roe, Lilburne, Smith *and* Harvey, *and set them to the Bar, which was done accordingly.*

Clerk. Hardress Waller *hold up thy hand, thou hast been Indicted and found guilty of High Treason, what canst thou say, why judgment should not passe on thee to dy according to Law?*

Waller. My Lords I am now it seems Convicted by Law, and so adjudged: Your Lordships the other day on my desire told me, I might have liberty to speak upon my trial, I must now beg the like upon a condemned person.

L. Ch. B. *You are Convicted, not Condemned.*

Waller. My Lords, I was the first that pleaded Guilty, I bless God that he gave me a heart to do it, I find most peace in the doing of it; and since there is nothing left but hopes of Mercy, I humbly submit it to your Lordships to hear me in this sad condition, that that may make me seem more capable of mercy. I have, my Lords, been so unhappy to have been transplanted out of my Countrey these thirty years, I have been but once these eleven years in *England*, this must needs make me a stranger.

L. Ch. B. *I must not hinder you, because it is for mercy that you plead, but consider with your self whether it will not be better to give it in a Petition: I leave it to you, we can do nothing in point of Mercy but Judgement.*

Waller. Onely this (my Lord) whether I am not the more capable of your mercy.

L. Ch. B. *That you may understand it, the Act of Indempnity of Parliament hath excepted you, yet upon some qualifications; we are to proceed according to Law, that is to give Conviction and Judgement, The Act sayes, that after Judgement there shall be no execution, but that it shall be suspended till a further Act of Parliament to be passed for that purpose; so that in the mean time we are to proceed no further then Judgment; That which concerns Mercy, is referred to another place, If you please*

to

to say any thing to satisfie us, or to go by way of Petition, it must be left to you, but what you say for mercy is nothing to us.

Waller. *I humbly thank your Lordships for this clear and noble dealing, and withall, I would beg that these people that are witnesses of my shame and guilt may know that it was a force and temptation upon me; I shall not insist much, I have said, that I did plead guilty, which was most safe to my own conscience, yet I should make it appear, that I did appear more to preserve the King from Tryal and sentence then any other.*

Lord Finch. Sir *Hardress Waller*, I have heard of late of your sorrow, which I was glad to hear of, because you are my kinsman, both by your Fathers and Mothers side, & also my Countrey-man; I was glad to hear of your great penitence for that horrid crime, and I would have been glad to have seen it now; advise with your self, whether you do your self any good in speaking to extenuate, when you know there is no man against whom there are such circumstances of aggravation as against you; consider whether a publick penitence would not be more proper.

Waller. *I do beseech you report me both to his Majesty and Parliament, and receive me into your grace, as being penitent, truly penitent: To say so now were a small thing, for the fear of the punishment may procure it, but I have been more penitent when no eye hath seen me but God, when I never imagined to be questioned for this sin, then my heart hath yearned in the business; but I shall not trouble your Lordships, God holds forth mercy, his Majesty holds forth mercy, the Parliament holds forth mercy. My Lords, let me say something to you, though it be but a word of the violence and force of temptation, you may have been under it or may come to it, Christ himself was under it, we finde that faithful* Abraham *by the power of a Temptation delivered up his wife to commit Adultery, which scarce a Heathen would, we finde that valiant* Peter *denied his Master, righteous* Lot *committed incest. None abhors this fact more then I do; I have done it so long before hand, I need not be afraid to speak it in the face of the Judge of all men, that is all I shall say, I rendred my self three times, I had as much opportunity to make my escape as any person whatsoever.*

Lord chief Baron. It is understood Sir *Hardress.*

Clerk. Isaac Penington hold up thy hand, thou art in the ſame condition as the former, what canſt thou ſay for thy ſelf why judgment, &c.

Penington. *My Lord, I have ſaid what I have to ſay, and ſhall not trouble your Lordſhips any further.*

Clerk, Henry Marten hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why Judgement, &c.

Marten, I *claim the benefit of the Proclamation.*

Clerk. Gilbert Millington hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why Judgement, &c.

Millington. I *ſhall not trouble you with long diſcourſes, I will ſay no more but this, I have made a publick reſentment of my ſorrow for this offence formerly, and many times, I ſhall now deſire no more, but humbly that I may have the benefit of the Proclamation, and pray his Majeſties moſt gracious pardon.*

Clerk. Robert Tichborne hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why Judgement, &c.

Tichborne. *My Lord,* I *will not trouble you with any repetitions, I have made my humble requeſt before,* I *leave it with you.*

Clerk. Owen Row, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why Judgement, &c.

Row. *My Lord,* I *have no more to ſay then I ſaid before.*

Clerk. Robert Lilburn, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why Judgement, &c.

Lilburn *I ſhall refer my ſelf without further trouble to the Court, my Lord, I beg the benefit of the Proclamation.*

Clerk,

Clerk. Thomas Waite, hold up thy hand, Thou art in the same condition, what canst thou say for thy self why Judgement &c.

Waite, I *can declare no more then what already, my heart is sorry for what I have done*, I *beg the benefit of the Proclamation.*

Clerk. Edmond Harvey, hold up thy hand, thou art in the same condition, what canst thou say for thy self why Judgement, &c.

Harvey. *My Lords*, I *have no more then what I have said before.*

Clerk. John downes, hold up thy hand, thou art in the same condition, What canst thou say for thy self why Judgement, &c.

Downes. I *shall not trouble you any further, I shall desire the benefit of his Majesties Proclamation.*

Clerk. Vincent Potter, hold up thy hand, thou art in the same condition, What canst thou say for thy self why Judgement, &c.

Potter. *My Lord*, I *do not know Law, I understand it not*, I *am not in a condition to speak what* I *would have willingly spoke. I desire that God would have mercy, and* I *look for mercy from God*, and wept.

Clerk. Augustine Garland, hold up thy hand, thou art in the same condition, what canst thou say for thy self why Judgement, &c.

Garland. *I humbly desire your Lordships charitable opinion of me, notwithstanding what has been objected against me*, I *humbly refer my self to the Parliament.*

Clerk. George Fleetwood, hold up thy hand, thou art in the same condition, what canst thou say for thy self why Judgement, &c.

Fleetwood. *My Lord, I have already confeſſed the fact I wiſh I could expreſſe my ſorrow*, and wept.

Clerk. James Temple, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why Judgement &c.

I. Temple. *My Lord I can ſay no more, I beg the benefit of the Proclamation.*

Clerk. Simon Mayne, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf, why judgement &c.

Mayne. I have told you before, my Lord, I have no more.

Clerk. Peter Temple, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why judgement &c.

Peter Temple. *My Lord, I came in upon the Proclamation, and I humbly beg the benefit of it.*

Cl. Tho. Waite hold up thy hand, thou art in the ſame condition what canſt thou ſay for thy ſelf?

Waite. *My Lord I refer it to your Lordſhips.*

Clerk. Francis Hacker, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why judgement &c.

Hacker. *My Lord, I have nothing to ſay, but what has been before your Lordſhips.*

Clerk. Daniel Axtell, hold up thy hand, thou art in the ſame condition, what canſt thou ſay for thy ſelf why judgement &c.

Axtell. *May it pleaſe your Lordſhips, my caſe differs from the reſt of the Gent.*

L. Lord chief Baron. I would be loath to hinder you, but I muſt tell you, that what hath been overruled muſt not be ſpoke to, if you have any thing againſt the Indictment, matter of Law, go on

Axtell.

Axtell. *I have one thing more that I did not then mention.*

L. chief Baron. If it tend not as an exception to the Indictment it is not to be heard.

Axtell. *My Lord, then I shall apply my self to that point, I humbly conceive my Lord, that my overtacts were not sufficiently set down in the Indictment, as might be sufficient in Law to attaint me of high treason, I do not remember that the Overtact that was applyed to me in evidence was charged in the Indictment, I have only that exception, because of the insufficiency of that point; In the next place, my Lord, there is not the right additions to my name, there are many persons of the same name, I am arraigned by the name of* Daniel Axtell *of* Westminster *in the County of* Middlesex *Gentleman, I think none knew me to live there and inhabit there.*

Lord chief Baron. I would not interrupt you, this is past, you should have made your exception to that as Master *Marten* did before concerning his name, that should have been first done, you have appeared and pleaded to that name, and it was late of *Westminster.*

Axtell. *My Lord, I have this to speak in arrest of Judgement, that the indictment being grounded upon that statute of the twenty fifth of Edward the third, it is either mistaken or not pursued, my Lords, I did yesterday give you the judgement of the Lords and Commons concerning the statute in relation to my case, I say the Statute was mistaken, or not pursued.*

Lord chief Baron. That was offered before Sir, as to the matter of it.

Axtell. *My Lord, I think not, I am mistaken if it were.*

Lord chief Baron. Then open it.

Axtell. *My Lord, I do not find in that statute, that words are an overtact, words onely.*

Lord chief Baron. This was overruled. The things that you objected were these, That there is not any overtact that is laid, that could be applicable to your case, if it were not particularly applicable (you are found guilty by the Jury) it would be nothing: But there is an overtact, you were present at the Court, beating the Souldiers, sending for an Executioner, but for words,

if

if one man should say, here is the King, go and kill him, this is treason: but you were guilty in all according to Law, You being there and doing this, you were not guilty onely of the words, but of all that was done, there is none but Principalls in treason, what we say and do to you we well know we must answer before God Almighty for it.

Axtell. I *have but one word more, truly I do appeal to God before whom I shall have another tryall, I do not find my self guilty either of consulting, contriving, or having a hand in the death of the King, I am innocent, and I pray God that my innocent blood*——

Lord chief Baron. Pray Sir——

Axtell. *May not cry*——

Lord chief Baron. You are now to speak in arrest of Judgement.

Axtell. I *have no more, I pray your Lordships favour and mercy to me.*

William Hulet alias *Howlet* hold up thy hand, thou art in the same condition, what canst thou say for thy self why Judgement &c.

Hulet. *Truly my Lord, I have little further to say, If you had been pleased to give me further time, I should have cleared my self, I call God above to witness upon this account, that I am as clear as any man, I submit to the mercy of the Court.*

Lord chief Baron. For that I do presume (but cannot positively say it) that at your request (notwithstanding the Judgement will past against you) there may be some time till his Majesties pleasure be known before any execution will be upon that Judgement against you, in the mean time we must proceed according to Law and Justice.

Proclamation for silence whilst judgement is giving.

The

The Lord chiefe Barons speech before the sentence pronounced against the aforenamed Prisoners found guilty.

You that are Prisoners at the Bar, you stand here in several Capacities, yet all of you persons convicted of the detestable and execrable murder of our Soveraign Lord King *Charles* the first of blessed memory. Mistake me not, I do not say that you are all of you guilty of executing the fact, but in Law and in conscience (*pro tanto* though not *pro toto*) you are guilty of it, in that you prepared the way and means to it, in that you brought his head to the block, though you did not cut it off. You are here in three sorts, and I must apply my words accordingly, and truely I do it with as much sorrow of heart as you have, many of you being persons of liberal education, great parts, I say you are of three sorts. There are some of you that though the judgement of death is to passe against you, by his Majesties grace and favour, and the mercy under him, of the two houses of Parliament, Execution is to be suspended until another Act of Parliament shall passe to that purpose, that is, all of you but three, for those three, the one of them that was last called, *William Heveningham*, he is in another capacity too; for I presume some time will be given to him to consider of some thing relating to him before any order will be given for his execution, there are two others of you, and that is *Dan. Axtel* and *Francis Hacker*, and for you as it yet stands before us, there is no mercy, there is no room for it, but though you be in these several Classes, yet what I shall say will concern you all, because I do not know how it may fall with you, none of us knows how soon we may come to our deaths, some (probably) sooner then others, all must come to it, you are now before the tribunal of man, but that is for judgement for your offence here, but there is another judgement hereafter and a tribunal before which both you and we must stand, every man here, and we must receive according to our work, those that have done ignorantly, by a serious and unfeigned

ed repentance God Almighty may shew mercy unto them. He hath reserved mercy even for the greatest offenders, Saint Paul himself when he persecuted Christ ignorantly, upon his repentance he found mercy, those of you that are not yet convicted in your consciences of the foulnesse of this horrid fact, look into your consciences a little more, and see if it be not a great judgement for your former offence, that you should be given over to a reprobate sense, let me tell you a feared conscience, a bold confidence not upon good grounds, is so far from securing the conscience, it may stifle perhaps the mouth of Conscience, but it will rise up more in judgement against you. Here you have made your defence, and I do not blame you for it, life is precious, but remember the thoughts of your hearts are open whether you did it Ignorantly, Covetously, or to get the government into your own hands, that I am not able to search into, God and you only know that; give me leave to say something, perhaps I have repeated it by parts before, God is my witnesse what I speak, I speak from mine own conscience, and that is this, Gentlemen, because I saw it stuck with some of you, that is, that whatsoever the case was, that by the Laws of these Nations, the fundamental laws, there could not be any coercive power over your King, I speak it again, because I would as near as I could, speak the whole truth and would not mislead any man in such a case, remember *that no power, no person, no Community or body of men, not the people either collectively or representatively, have any coercive power over the person of the King by the fundamental Lawes*, for that Gentlemen I shall begin to shew you that which all of you might remember, that is, your oathes of Allegiance and Supremacy, and to adde to this that obligation which all this whole Nation did oblige themselves to, by the Parliament without question then rightly represented and in being. The first of K. *James* whereby to shew you, that not only persons, but the body politick of the Nations, not only the single Members, but the Members in both houses of Parliament were loyal and obedient subjects to the K. their head, even to yield a natural and humble obedience, and allegiance. I told you the Act of the 1. of K. *James*, when K. *James* came first into *Engl. we the Lords and Com. representing the whole people of the*

Nation,

Nation, the very words of the Act are so, *primo Iacobi*, Chapter the first, *representing the whole body of the Nations, doe acknowledge an humble naturall Liege obedience to the King, as supreme, his Heirs and Successours. and in the name of themselves and all the people, humbly submit themselves, untill the last drop of their blood be spent in defence of the King and his Royall posterity*; and therefore they did oblige themselves, and all the people of *England*, as farre as they could represent them, (the words are more full then I can expresse them) and indeed it is so dark I cannot read them. They did acknowledge, to be bound to him, and his Imperial Crown. Remember these were not words of Complement, you shall finde that they all of them, and so did so many of you, as were members of Parliament, yea all of you, before you came into the House of Commons, did take the Oath of Allegiance, which was made after this Recognition; the third and fourth of King *Iames*, or otherwise, were not to be members, what was that Oath of Allegiance that you took? it was that you should defend the King his person that is in 3 *Iacobi* Chapter the fourth, his Crown and Dignity) what was it? not onely against the Popes power to depose, but the words are *or otherwise*; look into the Act, and reflect upon your Conscience, and you shall find that all did swear to defend the King, his Crown and Dignity, and there it is called Imperial Crown, I would have you lay this to heart, and see how far you have kept this Oath. Gentlemen, in the Oath of *Supremacy* which you all took therein you did further acknowledge that the *King* was the onely Supream Governour of this Realm: mark the words, I will repeat them that you may lay it to heart, you that have more time to apply it to your fact; and you that have lesse time for ought I know, you have reason to consider what I have to say, you swear then that the *King* by the Oath of Supremacy, which all of you have taken or ought to have taken; If any of you have not taken it yet, notwithstanding you are not absolved from the obligation of it, but most of you did take it, there you swear that the *King* is the onely supream Governour of this Realm, & you swear there that you will defend all Jurisdictions, Priviledges, Preeminencies and Authorities granted or belonging to the *Kings* Highnesse, his

Heirs and Successors, or united or annexed to the Imperial Crown of this Realm. For the First if the King be Supreme, then there is no coordination. *Non habet majorem, non habet parem*, that (word Imperial Crown) is at least in nine or ten several Statutes, it is the very word in this Act that was made lately in pursuance of former Acts concerning Judicial proceedings, and so in the time of *K. Charles*, they acknowledged him to be their Leige Soveraign, I say the word *Supreme* and so the word *Imperial Crown*, is in the 1. of Q. *Eliz.* the 3. the 8. of *Eliz.* the tweath fourth of *Henry* the 8. chap. 12. there it is said this Kingdome is an Imperial Crown, subject to none but God Almighty. Before these times you shall find in the 16. *Richard* the 2. the Statute of *Pramunire*, the Crown of *England* subject to God alone. I will go higher, *William Rufus* (some of you are Historians, and you shall find the same in *Eadmerus*, and also in *Mathew Paris*, shortly after *William Rufus*'s time) when he wrote to the Pope, he challenged & had the same liberty in this Kingdome of *Eng.* as the Emperour had in his Empire (mistake me not, I speak onely as to the person of the King) I do not meddle of rights between the King and Subjects, or Subject and Subject, you see in this case concerning the death of his Majesties dear father, and our blessed Sovereign of happy memory, he doth not judge himself but according to law, that which I assert is as to the person of the King, which was the priviledge of Emperours as to their personal priviledges, if he had offended and committed an offence, he was onely accountable to God himself. I will come back to what I have said, you swore to be faithfull to the King as supreme. The King of *Poland* hath a Crown, but at his Oath of Coronation it is conditioned with the people, that if he shall not govern according to such and such rules, they shall be freed from their homage & allegiance. But it differs with our King, for he was a King before oath. The King takes his oath, but not upon any condition: this I shew you to let you see that we have no coercive power against the King. The King of *Engl.* was anointed with oil at his coronation, which was to shew that absolute power (I do not say of Government) but of being accountable to God, for what he did: The Law saith, *the King doth no injury to any man*, not but that the King may have the imbecillities & infirmities of other

men,

men, but the King in his single person can doe no wrong: but if the King command a man to beat me, or to disseize me of my Land, I have my remedy against the man, though not against the King: The Law in all Cases preserves the person of the King to be untouched, but what is done by his Ministers unlawfully, there is a remedy against his Ministers for it, but in this case, when you come to the person of the King, what do our Law Books say he is? they call him *Caput Respublicæ*, *salus Populi*, the Lieutenant of God; and let me tell you, there was never such a blow given to the Church of *England* and the Protestant Religion. There was a Case, and that of the *Spencers*, you shall find in the 7th. Report of the Lord *Cook*, in *Calvins* Case, that Homage is due to the King in his politick capacity, and then they made this damnable inference, that therefore if the King did not demean himself as he ought, that he should be reformed *pure aspertee*, by asperity, sharpness or imprisoment, but these were condemned by two Acts of Parliament in Print, that they could not do: that even in that case, one was called the banishment of *Hugh Spencer*, and the other is in 1. *Edw.* 3. upon the Roll. My Masters in the first of *Henry* the 7th. you shall find it in the Printed seaven Books he saith, that as to the Regality of his Crown, he is immediately subject unto God. Mark the Doctrine of the Church of *England* Gentlemen, I doe not know with what spirit of equivocation any man can take that Oath of Supremacy: You shall finde in the Articles of the Church of *England*, the last but one or two; it is that Article which sets forth the Doctrine of the Church of *England*; they say that the Queen and so the King hath the supream power in this Realm, and hath the chief Government over all the Estates of the Realm, the very words are so, this was shortly after making the Act, the Articles were in 1552 and she came in 1558 or 1559, it is to shew you the King hath the chief Government over all the Estates within the Nation, and if you look upon it, you shall finde it was not onely the judgement of the Church, but of the Parliament at the same time. They did confirm this Article so far, that they appointed that no man should take or be capable of a Living but those that had taken that Oath, God forgive those Ministers that went against it. The Queen and the Church were willing

that these should be put into Latine, that all the world might see the Confession of the Church of *England*, and of the people of *England*, you may read it in *Cambden*: I have told you how and wherein the chief power consisted, not in respect the King could doe what he would; no, the Emperours themselves did not challenge that, but this they challenge by it, that they were not accountable to man for what they did: No man ought to touch the person of the King, I presse it to you in point of conscience, you see in the Scripture in the 51. *Psal.* the Psalm of mercy whereby we ask pardon of God for our great offences, I think none of you in this condition, but will joyn in this, you know the adultery and murther that *David* committed, this penitencial Psalm was made for that, what doth he say? against thee, thee onely have I sinned, &c. *tibi soli peccavi, Domine*; not because he had not sinned against man, for 'tis plain he had sinned, both against *Bathsheba*, and *Uriah* too: But because, He was not liable to the tribunal of man, he was not bound nor accountable to any man upon earth: and now my Masters, *I* beseech you consider that some of you, for ought *I* know, suddenly, and some of you for ought I know, not long after, all of us we do not know how soon, must come to make a right account to God of what we have done, after this life you enter into an Eternity, an Eternity of happinesse, or of Woe, God Almighty is mercifull to those that are truly penitent, the thief upon the Crosse, and to all that are of a penitent heart, you are persons of education, do not you go on in an obstinate perverse course for shame of men, even this shame which you now have, & which you may have when you come to die, a sanctified use may be made of it, you pay to God some part of that punishment which you owe to him for your sinnes, I have no more to say but the next thing I have to do is, to give the Sentence, the Judgement, which truly I do with as unwilling a heart, as you do receive it. You Prisoners at the Bar, the Judgement of the Court is this, and the Court doth award that &c. and the Lord have mercy on your Souls.

Court adjourned till *Friday* seven a Clock in the morning.

Friday

Friday 19. *Octob.* 1660.

Set *William Hevening ham* to the Bar.

Serjeant Keeling. May it please your Lordships, the prisoner at the Bar *William Hevening ham* hath been indicted of high Treason for compassing and imagining the death of the late King of blessed memory, he has been tryed, the Jury has found him guiltie. I do humbly move your Lordships in the behalf of the King that you will proceed to Judgement.

Cler. V William Hevening ham, hold up thy hand, what canst thou say for thy self why Judgement, *&c.*

Hevening ham. My Lords, I have nothing more to say then I said formerly, only I plead the benefit of the Proclamation, and cast my self upon the mercie of our most gracious Soveraign, and desire your Lordships to be mediatours on my behalf.

Lord Ch. Baron. By the Act of *Indempnity* (of which you claim the benefit, and we ought to take notice of it) we are to proceed to Judgement, but no Execution of this Judgement is to be untill by another Act of Parliament by consent of the King it shall be Ordered. And therefore I need not speak more of that, or any Exhortation for preparing your self for death; our work is only to give Judgement; The Judgement of the Court is this and the Court doth award, that you the Prisoner at the Bar be led back to *&c.* And the Lord have mercie upon your Soul.

THus having given to the Reader a most impartial view of every passage occurring in this so solemn and legal Indictment, Arraignment, Tryal & Condemnation of these Twenty nine black Regicides, with their several Pleas and Defences in their owne words: It may be also some additional satisfaction to let the Reader know the time and manner of the Death of such of them who were according to the Sentence Executed. For their last Discourses and Prayers, as they were made in a Croud, and therefore not possible to be taken exactly; So it was thought fit rather to say nothing, then give an untrue account thereof: choosing rather to appear lame, then to be supported with imperfect assistances.

On

ON Saturday the 13. of *October* 1660. betwixt nine and ten of the clock in the morning, Mr. *Tho. Harrison*, or Major General *Harrison*, according to this Sentence was upon a Hurdle drawn from *Newgate* to the place called *Charing*-Crosse, where within certain Railes lately there made, a Gibbet was erected, and he hanged with his face looking towards the Banqueting house at *Whitehall* (the place where our late Soveraign of eternal memory was sacrificed) being half dead, he was cut down by the common Executioner, his privy members cut off before his eyes, his Bowels burned, his Head severed from his Bodie, and his Body divided into Quarters, which were returned back to *Newgate* upon the same Hurdle that carried it.

His Head is since set on a Pole on the top of the South-East end of *VVestminster* Hall, looking towards *London*.

The Quarters of his Body are in like manner exposed upon some of the City Gates.

Monday following being the sixteenth of *October*, about the same hour Mr. *John Carew* was carried in like manner to the same place of execution, where having suffered like pains, his Quarters were also returned to *Newgate* on the same Hurdle which carried him.

His *Majesty* was pleased to give, upon intercession made by his friends, his Bodie to be buried.

Tuesday following, being the sixteenth of *October*, Mr. *John Cook* and Mr. *Hugh Peters* were about the same hour carried on two Hurdles to the same place, and executed in the same manner, and their Quarters returned in like manner to the place whence they came.

The Head of *John Cook* is since set on a Pole on the North-East end of *VVestminster* Hall (on the left of Mr. *Harrisons*) looking towards *London*, and the Head of Mr. *Peters* on *London* Bridge.

Their Quarters are exposed in like manner upon the tops of some of the City Gates.

Wednesday *October* the 17. about the hour of nine in the morning, Mr. *Thomas Scot* and Mr. *Gregory Clement* were brought on several Hurdles; and about one hour after Mr. *Adrian Scroop* and Mr. *John Jones* together in one Hurdle were carried to the same place, and suffered the same death, and were returned and disposed of in like manner.

Mr. *Fra.*

Mr. *Fra. Hacker* and Mr. *Dan. Axtel* were on Friday the 19. of *Octob.* about the same time of the morning drawn on one Hurdle from *Newgate* to *Tyburn*, and there both Hanged, Mr. *Axtel* was Quartered and returned back, and disposed as the former; but the Body of *Mr. Hacker* was, by his Majesties great favour, given entire to his friends, and buried.

FINIS.